Multidisciplinary Services: Organizational Innovation in Professional Service Markets

Prepared by
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for
The Professional Organizations Committee

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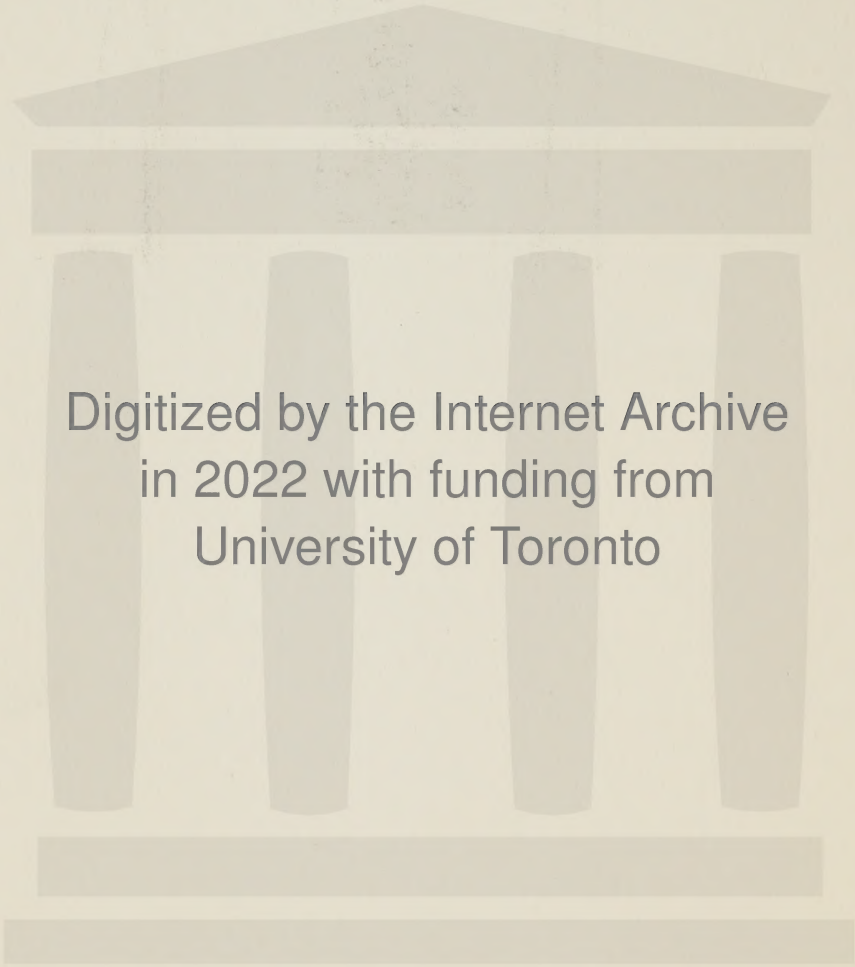

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MULTIDISCIPLINARY SERVICES: ORGANIZATIONAL INNOVATION IN PROFESSIONAL SERVICE MARKETS

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for

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INTRODUCTION

"Multi-disciplinary service" shall be defined, for the purpose of this analysis, as a service provided by two or more types of professionals, or a combination of professional and non-professional service suppliers. The provision of multi-disciplinary services may be organized through the traditional legal vehicles, such as the partnership or corporation; multi-disciplinary services may also be provided by dually qualified practitioners, individuals who practice two or more professions, or a combination of professional and non-professional occupations concurrently. This operational definition of multi-disciplinary service focuses on existing occupational and professional categories, not on particular skills or task functions. Neither statute law nor custom provide precise and comprehensive lists of the specific functions comprising the "practice of law"[1] or "public accountancy".[2] The practical impossibility of postulating mutually exclusive sets of professional and occupational functions has been demonstrated by the jurisdictional dispute between architects and engineers, which has revolved around the statutory definition of the "practice of professional engineering".[3] One of the central assumptions underlying this

analysis is that it would be both impracticable and undesirable for any regulatory scheme to attempt to translate consumer needs into closed functional categories assigned to particular professional groups. The service needs of existing and future consumers cannot be predicted with sufficient certainty. Moreover, even if consumer needs are static, advances in knowledge or refinements in task specialization may destroy the comparative advantages formerly possessed by a particular profession or occupation. A great advantage of the multi-disciplinary organization of work is the reduction of artificial constraints on the efficient allocation of functions and specific tasks in the provision of services. It may, for example, be that much of the work performed by a lawyer specializing in taxation can be more efficiently carried out by an experienced tax accountant. In order to preserve sufficient comprehensiveness and flexibility in this analysis, multi-disciplinary services should be perceived as merely the output from systematic collaboration between professional and non-professional workers.[4]

One further qualification on the definition of multi-disciplinary services utilized in this paper is necessary. This analysis will be confined to multi-disciplinary collaboration within organizations offering services to the public. Many large organizations employ multi-disciplinary methods

in carrying on their activities. To borrow from Professor Galbraith, the "technostructure" of the modern business corporation is a design for drawing on the specialized knowledge of different disciplines.[5] Engineers work with accountants, economists with marketing specialists. Much of our knowledge about multi-disciplinary work is based on studies of corporate experience with organizing group or team effort. These studies are especially useful for identifying potential efficiencies in multi-disciplinary methods of service delivery.[6]

A related definitional problem concerns the nature and type of the several discrete operations required for the provision of any professional service. The identification of these operations is facilitated through the use of an ideal-type model of professionalism, or the generalized professional function. Professors Tuohy and Wolfson have constructed such a model of professionalism, characterizing it as a type of relationship between producers and consumers of service.[7] The model postulates two distinct functional components of the professional relationship: (1) an agency function which requires the professional to identify client needs and select appropriate strategies for satisfying them; and (2) a service

function involving the use of technical expertise in the implementation of the chosen strategy or solution.[8] The distinguishing characteristic of the professional relationship, as contrasted with the relationships created by other contracts for personal service, is the existence of an agency function.[9] The client authorizes the professional to make decisions affecting his interests, partly because of the professional's differential access to pertinent theoretical and technical knowledge and partly because of the high costs of transmitting sufficient information to the client to permit autonomous decision-making. This centralization of decision-making authority necessitates professional control over a number of second-order decisions preliminary to the provision of service: (1) the professional must select the types and quantities of information to be collected from both professional and client sources; (2) he must specify the client's problem and formulate alternative solutions; and (3) he must prescribe a solution or plan of action consistent with his client's preferences.[10]

The Tuohy-Wolfson conception of the professional's agency function, with its focus on the prescription of client needs, has important implications for the potential benefits from

multi-disciplinary organization. In some fields of professional work, the most substantial gains in joint productivity may be realized through multi-disciplinary collaboration in the specification of client problems and the formulation of appropriate solutions. Some multi-disciplinary firms market what are primarily "problem solving" or information services to large corporate or institutional clients. The promotional literature circulated by management consulting firms emphasizes an interdisciplinary approach to the identification and solution of client problems.[11] Firms combining the skills of architects, engineers and other design professionals are retained to develop comprehensive design "concepts" or packages for hotel or restaurant chains, while the planning and construction of individual projects is contracted out to local firms.[12] A satisfactory analysis of the costs and benefits of multi-disciplinary services should proceed from a "problem solving" conception of the professional function. While the technical functions required for the performance of a professional service will often be susceptible to standardization, the professional worker typically confronts the problem or needs of a particular client as a unique and individuated case. The professional's ability to identify

and define the client's need is largely a function of his observational standpoint, a perspective or manner of perceiving reality that is primarily conditioned by his professional training and work experience.[13] A primary purpose of this paper is to explore the extent to which the performance of this problem solving function can be improved through collaboration by professionals who possess complementary perspectives on client problems.

B. Innovation and Consumer Response

Since much of this analysis focuses on the supply characteristics of the market for professional services and, more specifically, the changes in supply that may result from multi-disciplinary organization, a few general observations on the potential demand for multi-disciplinary services should provide some notion of the consumer welfare implications of these potential changes in market conduct. The multi-disciplinary organization of professional work should be perceived as a form of innovative behavior. Innovation may affect the welfare of professional service consumers in two general ways: (1) it may reduce the costs of existing types of service; and (2) it may result in

the creation of new services, either through advances in quality or through the introduction of wholly original forms of service.[14] Since innovation is a creative process, the consequences of successful innovative effort, which must turn on events occurring in the future, cannot be predicted with certainty. However, some characteristics of existing markets do suggest probable distributional patterns for consumer benefits from improvements in productivity and service quality.

A substantial portion of this paper attempts to establish that the multi-disciplinary organization of professional and related non-professional work will facilitate the introduction of new production methods which reduce the costs of providing existing forms of services.[15] Assuming, at this stage of the analysis, that substantial cost reductions would be reflected in lower prices for existing services, the benefits would accrue to both existing consumers and new consumers attracted to the market for the first time. For many types of professional services, the effect of price reductions on the quantity of services demanded by existing consumers would be difficult to predict. As I attempted to stress in discussing the general nature of the professional function, the professional exercises a profound influence upon the client's perceived need for

service. This important characteristic of the supply side of the market substantially dilutes the client's autonomy in making explicit consumption choices based on price-quantity relationships. Based on this analysis, only very sophisticated consumers, those possessing sufficient expertise and information to permit a close alignment of their needs with the price and quantity characteristics of the services offered, could be expected to respond to price reductions by purchasing greater quantities of service.[16] This is not to suggest that consumers would not be better off; to the extent that the market is otherwise functioning properly, existing consumers would merely get the same service at a lower price.

Reductions in the prices of existing services as a result of cost-cutting innovations, should open up new markets and new market segments comprised of consumers whose needs have not been satisfied in existing markets. There is substantial evidence that large potential markets exist for legal,[17] accounting[18] and, to a lesser extent, architectural services.[19] These untapped market segments primarily involve services for individuals and households which have been priced out of existing markets.[20] Multi-disciplinary methods of providing existing

types of service should result in improvements in access for these groups.

Multi-disciplinary approaches to the organization of professional work may affect the quality of services consumed in two general ways. Multi-disciplinary collaboration may improve performance of the agency function--the identification of client needs and the formulation of appropriate solutions. As the rapid expansion of technocratic knowledge increases the complexity of client needs, the problem-solving perspectives of any single professional discipline may often be inadequate. When markets are organized so that potentially complementary services can only be provided separately, the identification and definition of a client's service need may often be determined by the client's ill-informed choice to consult a lawyer rather than an accountant. The multi-disciplinary organization of professional services should confer substantial benefits on those client groups whose complex and multi-faceted problems require the attention of inter-disciplinary specialist teams.

The joint application of complementary professional and non-professional technical skills to client problems may also increase the quality of the actual services provided. For

example, improvements in the performance of the service function may result from a reallocation of task functions within a multi-disciplinary work group on the basis of skill or aptitude, as opposed to task assignment based solely on professional or occupational categories.[21] If these sorts of qualitative improvements were to result from the joint provision of services which are currently being offered separately, what types of consumers would be most likely to benefit?

There is historical evidence which suggests that large corporate and institutional consumers which regularly purchase large volumes of services are the most likely to benefit from "new service" or quality innovation. The development of the typical large law or public accountancy firm reflects a pattern of organizational innovation shaped by the service needs of its established corporate clients. As business enterprises in the urban industrial societies expanded in size and complexity, they demanded many new and technically complex services. Corporate law and public accountancy firms, organized on the basis of task specialization, and offering a mix of services tailored to meet the specific needs of their large business clients filled the vacuum.[22] The modern management consulting firm was an

imaginative response by public accounting firms to the unmet needs of their audit clients.[23] This pattern suggests that existing client groups are most likely to benefit from innovations in quality, primarily because they possess established information channels to communicate their needs to service providers.[24] If frequent and sustained contact with a particular client group is necessary to obtain sufficient information about its unmet needs, consumers in currently untapped market segments are least likely to be the targets of new service or quality innovations. The relaxation of existing restrictions on advertising and other marketing activity may partially solve this information problem. Moreover, there should be some complementarity between innovative behavior which reduces the costs of existing services and quality innovation. As new market segments are opened up through the introduction of cost reducing innovations, information channels will be created between professionals and new client groups. After obtaining some experience in serving these new market segments, professionals should acquire the knowledge of unmet consumer needs which reduces the risks of experimenting with new forms of service. With this analysis of how the introduction of multi-disciplinary services might

benefit consumers as general background, the first step is to assess how the existing regulatory system affects the prospects for multi-disciplinary innovation.

C. The Regulatory Systems and Their Effects

The regulatory schemes of the four professions differ markedly in their treatment of multi-disciplinary methods for organizing their members' work. It would be more precise to say that the four schemes differ in their effects on the opportunities for marketing multi-disciplinary services, since none of them explicitly proscribe all forms of multi-disciplinary practice. These differences in treatment arise out of structual characteristics peculiar to each of the four professions. The basic rationale for regulation of all four professions is "consumer ignorance", based on the professional's differential access to specialized knowledge. Yet the basic conditions which shape professional and client conduct in each of the four markets have caused sharp differences in the scope and content of the regulatory schemes. Factors such as the relative sophistication of the profession's clientele, the relative importance of the agency function in the profession's work, and the institutional context in which the profession's members perform their

duties have affected the content of the rules promulgated by each of the self regulating bodies. This diversity in approaches to the control of professional conduct can be more clearly perceived if we begin by a consideration of the goals of the regulatory systems.

The central market failure problem, the justification for regulation, is a general lack of information on the part of consumers due to the specialized and complex nature of the production process. The regulatory response, common to all four professions, has been a licensure system to control entry and an ethical code to control professional conduct. More importantly, the licensure standards and ethical codes of each of the four professions have been shaped by three general objectives- to police professional competence, independence and integrity. While these goals overlap to some extent, they provide an analytic framework for a critical survey of the existing regulatory systems and their effects on the prospects for multi-disciplinary services.

The goal of ensuring professional competence is, of course, promoted by the licensure system, which restricts the right to practice to those persons possessing certain minimum qualifications. This regulatory goal also underlies the concomitant

restrictions on unauthorized practice. These general prohibitions on practice by unlicensed persons are, in turn, the justification for several ancillary rules which indirectly prohibit multi-disciplinary practice. Thus, some ethical codes proscribe the division of fees from professional work with unlicensed persons.[25] Other codes restrict participation in a professional partnership to licensed individuals, although unlicensed personnel, under the supervision of a licensed person, may be employed in the provision of services.[26] The competence goal has also been invoked to justify ethical restrictions on the conduct of the employed professional. Thus, a partnership composed entirely of nonlicensees may not employ a licensed lawyer for the purpose of offering legal services to the public.[27] It should be noted that the more prevalent and logical, rationale for limiting the marketing of services through employed professionals is a concern for preventing unlicensed persons from exercising control over the provision of professional services.

The second regulatory goal of promoting the independence of professional decision-making is linked to the agency function. When decision-making authority is delegated to the professional, he implicitly assumes the responsibility to act only in the client's best interest. In other words, the proper performance

of the agency function requires that the professional's judgment be not only adequately informed, but also reasonably altruistic.[28] Thus, ethical codes seek to safeguard the independence of professional decision-making by proscribing forms or methods of practice which may give rise to conflicts of interest. Prohibitions on corporate practice are designed to prevent potential conflicts between the professional's responsibility to his client, and his obligations to lay directors or shareholders who may seek to control his professional work in a manner detrimental to his client's interests.[29] This concern for insulating the professional from lay third party control is the basis for restrictions on public practice by employed professionals. Thus, many professional groups require that members, engaged in public practice, accept employment only with partnerships or corporations which are either wholly owned or effectively controlled by fellow members.[30] These ethical rules severely limit, and in some cases, indirectly forbid the organization of multi-disciplinary practice.

The goal of ensuring professional independence has also given rise to ethical strictures on a professional's performance of certain occupational roles which are potentially incompatible

with his professional work.[31] This type of role conflict is inherent in particular types of multi-disciplinary service. Thus, a lawyer, who provides estate-planning services may find himself in an acute conflict of interest if he also offers to sell life insurance to his legal clients. Similarly, an architect is generally prohibited from undertaking the functions of a building contractor on a project for which he has been retained to provide architectural services. Because these conflicts arise in all of the professions, varying in nature and degree depending on the type and organization of the profession's work and the characteristics of its clientele, they create the most pervasive and, perhaps, the strongest ethical objection to many types of multi-disciplinary practice.

The regulatory goal of promoting professional integrity is premised on the general assumption that the layman's imperfect information concerning the quality of professional services renders him peculiarly susceptible to dishonest or overreaching behavior. The regulation of competence, by conditioning licensure on the attainment of minimum standards of proficiency, does not insure that clients will receive services of adequate quality. This is because service quality

is at least as dependent on the amount of time or effort expended by the professional as it is on his general proficiency or ability. The ill-informed client's inability to perceive differences in quality provides the professional with a certain degree of discretion in deciding how much time or effort will be spent in performing a particular service. This discretionary control over effort, more or less constrained by client sophistication, creates opportunities for dishonest conduct. Since professional income is substantially affected by the volume of services provided, an unscrupulous practitioner may seek to expand volume by reducing his inputs of time below the amount required for the delivery of adequate quality service.[32] Moreover, since the professional exercises some control over his client's perceived needs for service, he may seek to increase his income by prescribing superfluous or marginally necessary services.

The traditional approach to the policing of professional integrity has been the strict control of most forms of price and non-price rivalry in professional service markets. The rationale for this regulatory approach is that competition, at least in the short run, will exert downward pressure on professional

incomes and increase the financial incentive to engage in dishonest practices.[33] This argument is based on several general assumptions. First, that markets for professional services are generally afflicted with chronic excess supply conditions because of the inadequacy of information available to potential entrants.[34] Second, price competition will not result in a satisfactory adjustment response on the supply side of the market because the average professional's fixed costs (education and training) are high in relation to his variable costs (primarily time), and his skills are not readily transferable to other modes of employment.[35] And, third, that more direct methods of regulating professional integrity (e.g. direct performance monitoring) would entail costs of policing and enforcement far in excess of their probable benefits from superior performance. In short, the rationale is that, while the control of competition may not insure the provision of adequate quality services to poorly informed consumers, it is the preferred regulatory approach, in the absence of cost efficient modes of direct regulation, because it reduces the potentially strong incentives to engage in dishonest practices. It is worth emphasizing that this rationale, if accepted in its strongest

form, justifies not only a ban on price competition but the strict control of all forms of advertising and promotional activity. While it is generally true that the layman's imperfect information concerning the quality of professional services makes him unusually susceptible to misleading advertising, some professional groups have gone far beyond the traditional approach of policing the dissemination of deceptive or false information by conduct-specific rules and sanctions. These groups have adopted detailed ethical rules specifying permissible types of information and authorized methods of communicating with existing or prospective clients.[36] Such a vigorous prophylactic approach can only be justified on the ground that adequate regulatory control over prices, and professional incomes, necessitates the removal of all commercial stimuli from professional services markets.

Ethical restrictions on price and non-price rivalry impede the development of multi-disciplinary forms of practice. At the most general level, bans on advertising and promotional activity substantially reduce the incentives for professionals to create multi-disciplinary organizations or engage in other forms of innovative behavior.[37] Existing constraints on

information flows in professional service markets limit consumers' knowledge of current or potential alternatives, and, of course, limit their response to the introduction of innovations. Thus, an inability to communicate dampens incentives by greatly reducing the benefits a practitioner can expect from adopting new modes of practice.

Multi-disciplinary forms of practice may also create opportunities for circumventing ethical rules prohibiting direct and indirect solicitation of professional business.[38] Thus, some commentators have argued against multi-disciplinary practice on the ground that the professional could avoid ethical contraints on indirect solicitation by encouraging his lay partner or associate to approach prospective clients.[39] Others have advocated a ban on multi-disciplinary practice because of the opportunity for a promotional practice which has been called "feeding"; a multi-disciplinary firm might attempt to solicit ("feed") clients from one of its concurrent practices for patronage of the other services it offered.[40] It should be recognized that the "feeding" argument against multi-disciplinary practice goes beyond the mere condemnation of a form of professional organization which impedes the enforcement of rules against direct solicitation. While the argument is usually framed in terms of "unfair competition",[41] a more subtle and difficult regulatory problem arises from the nature of the agency function and the consequent opportunity to influence the client's demand for other services offered by the multi-disciplinary firm. In this more refined sense, "feeding" refers to the risk that the professional engaged in multi-disciplinary practice will attempt to persuade the client to purchase complementary services which are either unnecessary or of inadequate quality.

A few concluding observations on the regulatory goals of the four professional groups should help clarify the objectives of this analysis. My characterization of regulatory goals proceeds from an assumption that the ethical codes of the four professions embody specific institutional responses to the failure of the price system in professional service markets. In other words, I have assumed that the primary regulatory goal is the promotion of consumer welfare. It may be that certain ethical rules which impede the introduction of multi-disciplinary forms of practice can only be adequately explained by reference to professional self-interest. Thus, for example, ethical rules which prohibit a professional from forming a partnership with an unlicensed person may be justified as a legitimate way of foreclosing opportunities for avoiding the ban on unauthorized practice, or they may be condemned as an attempt by the professional body to stifle organizational innovation. The self-regulating bodies may be hostile to the multi-disciplinary organization of professional services for several reasons.[42] Multi-disciplinary forms of practice may reduce the costs of existing services, and generate competitive pressure for lower prices. Multi-disciplinary methods may also reduce demand for the services of some types of professionals. This might occur through the reorganization of the production process to permit the substitution of more cost

efficient professional or non-professional workers in the performance of functions which are currently monopolized by a particular professional group. Innovations which involve economies in the utilization of professional inputs create the risk of excess supply, with its downward pressure on prices and professional incomes. While professional resistance to multi-disciplinary innovation may be partially rooted in producer self interest, the purpose of this analysis is more prescriptive than explanatory. The question to be resolved is whether existing regulatory constraints on multi-disciplinary forms of practice should be modified, and, if so, what specific modifications should be implemented? Behavioral explanations for the existence of particular ethical rules premised on assumptions of professional self-interest are of limited use in resolving this question. What is required is an analytic framework which sharpens one's sense of the costs and benefits of the existing regulatory systems. Therefore, assuming that the structure and content of current regulation is based on the consumer welfare objectives that have been articulated, the development of this analysis necessitates a more detailed consideration of the rules of the four professional bodies and their effects on the prospects for multi-disciplinary practice.

(a) Law

1. Competence

In addition to establishing a general licensure system, The Law Society Act[43] protects consumers of legal services by prohibiting unqualified (unlicensed) persons from engaging in the practice of law. The Canadian Bar Association and the Law Society of Upper Canada have sought to reinforce this statutory prohibition by enjoining their members to "assist in preventing unauthorized practice", and by proscribing the division of legal fees with non-lawyers.[44] Ethical rules designed to foreclose opportunities for unauthorized practice are common in other jurisdictions. The English Law Society's Solicitors' Practice Rules forbid a solicitor from sharing his professional fees with any unlicensed person.[45] The American Bar Association's Code of Professional Responsibility not only proscribes the division of fees with non-lawyers, but also prohibits entering into a partnership with an unlicensed person if any of the firm's activities involve the practice of law.[46] Since none of these ethical codes contain express or implied exemptions for multi-disciplinary firms, prohibitions on the division of fees with non-lawyers would seem to preclude effectively lawyers from participating in multi-disciplinary practice.

The Law Society's rigorous preventive approach to the policing of unauthorized practice has not, however, had the effect of foreclosing all collaboration between lawyers and non-lawyers. Law firms have traditionally employed unlicensed personnel such as patent agents and law clerks, without running afoul of the fee sharing ban. Thus, the only practical effect of the rule against sharing fees with lay associates and clerks has been to prevent unlicensed persons from attaining partner status and participating in firm profits. Nevertheless, the ban on unlicensed partners in firms providing legal services does discourage multidisciplinary practice with members of those professional and occupational groups which permit practice in collaboration with non-members. This is because many prospective professional and non-professional associates of legal partnerships would be unwilling to accept employment without any chance of elevation to partner status. There is some evidence that law firms specializing in patent practice have had difficulty retaining their best patent agents for this reason.[47]

2. Independence

The Law Society of Upper Canada has sought to police professional independence by prohibiting forms of practice which may subject the

lawyer-client relationship to the control of non-lawyers The Law Society Act bans the practice of law by a professional corporation to ensure that non-lawyers, either as shareholders or directors, cannot obtain the right to direct or control lawyer-client relations.[48] The American Bar Association authorizes corporate practice, but requires that share ownership be limited to lawyers.[49] The Law Society's rule against sharing fees with unlicensed persons is also designed to insulate lawyers from lay third-party control. It prevents lawyers from accepting employment with any organization offering legal services to the public which is owned, either wholly or partially, by non-lawyers.[50] The effect of these rules designed to protect professional independence is to preclude any form of multi-disciplinary practice, through either a corporation or partnership, involving ownership by non-lawyers.

Another group of broader ethical rules aims at the promotion of professional independence by prohibiting the performance of occupational roles incompatible with the practice of law because they may create conflicts of interest. The Canadian Bar Association's Code provides that a lawyer who engages in another profession or occupation ". . . concurrently with the practice of law must not allow such outside interest to jeopardize his professional

independence."[51] Regulations promulgated by the General Council of the Quebec Bar prohibit advocates from engaging in the concurrent practice of any ". . . trade or other profession governed by statute" and from the ". . . operation of any commerce or industry. . . ."[52]

The Law Society of Upper Canada has not adopted any specific ban on the performance of incompatible functions, nor has it formulated any general principles governing the concurrent practice of other professions or occupations. The Law Society has, however, adopted specific rules concerning lawyers who engage in such activities as financial management or mortgage brokering as adjuncts to their professional work. For example, Ruling 15 does not prohibit a lawyer from acting as a mortgage broker, but it does provide that:

> "It is improper for a lawyer acting for the person introduced by him to a mortgage company, . . . to accept a finder's fee unless (i) he makes full disclosures to his client, and (ii) pays the fee over to the client or credits the same against his account to the client."[53]

It should be emphasized that conflicts of interest arising from a lawyer's performance of certain occupational functions (e.g. real estate agent, insurance agent, etc.) create particularized or fact-specific ethical objections to multi-disciplinary

practice. Many forms of multi-disciplinary practice in which lawyers might be expected to participate (e.g. law and accountancy or law and engineering) create no unusual risk of conflicts which may impair a lawyer's independent judgment. Moreover, it should be noted that the ethical rules of neither the Canadian Bar Association nor the Law Society generally prohibit a lawyer from accepting employment or continuing to act in circumstances in which a conflict of interest affecting his client may exist. They only require that the lawyer obtain his client's consent to the existing or potential conflict, after providing the client with a full explantion of the facts giving rise to the conflict.[54]

3. Integrity

The Law Society of Upper Canada exercises strict control over price and non-price rivalry in the legal services market.[55] In addition to dampening incentives for multi-disciplinary types of innovation, the Law Society's rules governing advertising and solicitation indirectly limit the prospects for multi-disciplinary practice. Ruling 10 forbids the inclusion of any information concerning multi-disciplinary services (e.g., insurance, accounting, etc.) in a firm's office sign or letterhead; Ruling 16 imposes similar constraints on the only other authorized ways of communicating with clients - directories, announcements and professional

cards.[56] Other rules proscribing direct and indirect solicitation of business would appear to foreclose the remaining alternative methods of informing clients of the availability of multi-disciplinary services.[57]

Although the American Bar Association does not expressly forbid dually qualified members from engaging in the concurrent practice of other professions or occupations, it has virtually precluded multi-disciplinary practice through its rules governing advertising. Disciplinary Rule 2-102 (E) of the Association's Code of Professional Responsibility provides:

> "A lawyer who is engaged both in the practice of law and another profession or business shall not so indicate on his letterhead, office sign, or professional card, nor shall he identify himself as a lawyer in any publication in connection with his profession or business."[58]

It should be emphasized that the Law Society of Upper Canada has, at least by implication, adopted the same approach to dual practice. Dual practice is not, per se, proscribed; nor is it forbidden to carry on the concurrent practice of another profession or occupation from one's law office. Yet the Law Society's advertising rules which prohibit the dual practitioner from combining the announcement or identification of the two services on his letterhead, sign or professional card effectively preclude publicizing

the availability of multi-disciplinary services.[59] While neither the Canadian nor the American regulatory bodies have provided any official justification for this approach, one commentator has suggested that the advertising of multi-disciplinary services by an individual or firm would constitute a violation of ethical rules prohibiting lawyers from holding themselves out as specialists.[60]

Finally, multi-disciplinary forms of practice may create opportunities for circumvention of ethical rules proscribing the solicitation of business. The Law Society's Professional Conduct Handbook contains general prohibitions on both direct and indirect methods of soliciting legal work, and a number of specific rules against referral schemes in real estate practice.[61] Some American writers have specifically opposed multi-disciplinary practice on the ground that lawyers would be permitted to avoid ethical constraints on indirect solicitation by encouraging their non-lawyer partners or associates to approach prospective clients.[62] Multi-disciplinary practice by dually qualified individuals has been opposed on similar grounds.

(b) Accountancy

1. Competence

Entry into the practice of public accountancy is subject to a licensure system established by The Public Accountancy Act,[63] which prohibits the performance of "licensed functions" by unauthorized persons. Yet, neither the Public Accountancy Council (P.A.C.), the regulatory body, nor the Institute of Chartered Accountants of Ontario (I.C.A.O.), the private qualifying body, have sought to protect the consumers of signed financial statements by restricting membership in public accountancy firms to licensed individuals. Perhaps, the primary reason why the P.A.C. has not moved to prevent unlicensed persons from attaining partner status is that large public accountancy firms offer a wide range of "non-licensed functions", such as taxation and financial planning services. The I.C.A.O. has adopted a rule governing the use of the "chartered accountant" designation which does restrict its members' right to enter into a partnership with non-member licensees and unlicensed persons. Rule 406 (5) of the Institute's Rules of Professional Conduct provides that the "chartered accountant" designation may only be used by firms composed entirely of partners who are Institute members in good standing.[64] The ambiguity of

the phrasing in Rule 406 (5) has caused some confusion; Institute officers have suggested that the Rule proscribes any professional association with non-members.[65] Such an interpretation of Rule 406 (5) would seem inconsistent with other provisions of the Institute's Rules: Rule 402.2 would appear to contemplate association with non-members because it provides" [a] member engaged in the practice of public accounting who is associated with non-members. . . shall be responsible to the Institute for any failure of such associates. . . to abide by the rules of professional conduct of the Institute."[66] It is difficult to assess the extent to which Rule 406 (5) has deterred Institute members from associating with non-members, either licensed or unlicensed. It should be noted that the American Institute of Certified Public Accountant's Rules of Professional Conduct are far more restrictive in respect to professional association with non-licensed persons. Rule 3 provides ". . . participation in the fees or profits of professional work shall not be allowed directly or indirectly to the layity by a member."[67]

2. Independence

While The Public Accountancy Act prohibits the corporate practice of public accountancy,[68] the ethical rules of neither the P.A.C.

nor the I.C.A.O. manifest any serious concern with shielding practitioners from the control of unlicensed third parties, either as employers or passive investors. The Institute's Rule 407 prohibits corporate practice, but contains the qualification that "a member may associate with a professional corporation engaged in the practice of public accounting in a province other than Ontario. . . ."[69] In fact, the I.C.A.O. has asserted that its only serious concern with corporate practice is ensuring compliance with its Rules by members employed by corporations.[70]

The proper performance of an external audit (the "attest function") requires the exercise of impartial professional judgment. Thus, both the P.A.C. and the I.C.A.O. have adopted rules which generally require the public accountant to insulate himself from any financial interest or third party influence which might compromise his professional independence.[71] Neither body has expressly proscribed the concurrent performance of occupational roles which may create conflicts of interest. The Institute's Rules do, however, restrict the types of occupations which members may engage in while continuing to practice public accountancy. Rule 408 provides:

> "A member engaged in the practice of public accounting may engage in a business or practice as a department or part of such public accounting practice, in one or more of the following functions . . .:
>
> (1) management consulting,
>
> (2) trustee in bankruptcy,
>
> (3) electronic data processing,
>
> and
>
> (4) such other functions as council may, from time to time designate . . . ."[72]

Rule 409.1 permits a member engaged in the practice of public accountancy to carry on these same related activities through an organization separate from his practice; Rule 409.3 renders the member ". . . responsible to the Institute for any failure of such firm or corporation to abide by . . . ." the Institute's Rules.[73] The Rules do not attempt to rationalize these restrictions on multi-disciplinary practice as necessary to safeguard professional independence. The Institute of Chartered Accountants of England and Wales has adopted a somewhat more liberal approach. The Institute's Ethical Guide does not impose any categorical restriction on particular types of multi-disciplinary practice, but rather requires advance clearance from a special committee.[74] It should be noted that one of the functions authorized for concurrent practice, management consulting, comprises a vast array of non-

accounting management services such as executive recruitment, marketing analysis, plant layout, product analysis, etc. A recent study of the public accountancy profession in the United States criticized the provision of management consulting services to audit clients on the ground that they ". . . are incompatible with the public responsibility of independent auditors."[75] Moreover, conflicts of interest may arise from the joint provision of licensed and unlicensed accounting services to audit clients. The auditor may often identify deficiences in a client's accounting system or needs for tax and financial services in the course of performing an external audit. This "problem spotting" function creates opportunities for promoting the non-licensed services offered by the auditor's firm.

3. Integrity

Both the P.A.C. and the I.C.A.O. strictly control advertising by accountants in public practice. These rules expressly forbid a licensee from advertising the availability of any related service, even non-licensed accounting services, in conjunction with his public accountancy practice. Section 5 of the P.A.C.'s Rules of Professional Conduct provides:

> "A licensee should not, in his advertising or on his professional card or stationery, include any description of his occupation other than public accountant or, where applicable, 'trustee in bankruptcy'. Furthermore, he should not publicly associate his public accountancy practice with any other business or profession."[76]

In short, the P.A.C.'s approach to multi-disciplinary practice, involving either unlicensed functions or unrelated professions and occupations, is essentially the same as the position adopted by the Law Society of Upper Canada. Multi-disciplinary practice is not prohibited, nor are licensees prevented from carrying on the practice of other professions or occupations from their public accountancy offices. Yet, the P.A.C.'s advertising rules forbid publicizing the availability of any multi-disciplinary service which includes the provision of public accountancy services.

The I.C.A.O. has adopted the same approach. The Institute's Rules, which permit the provision of certain multi-disciplinary services in conjunction with the practice of public accountancy, require that signs, letterheads and brochures advertising the availability of multi-disciplinary services make no reference to the fact that the firm or its affiliate is concurrently engaged in public accountancy practice.[77]

Both the P.A.C. and I.C.A.O. have adopted general rules prohibiting the direct solicitation of audit business.[78] Multi-disciplinary forms of practice create the risk that public accountants may attempt to circumvent these rules by encouraging the solicitation of professional business through unlicensed partners and associates. The I.C.A.O. Rules governing multi-disciplinary

practice attempt to foreclose such arrangements by imposing on its members full responsibility for the conduct of their unlicensed partners and associates. Rule 409.3 provides that "[a] member engaged in the practice of public accounting who is associated with a firm or corporation carrying on a business or practice in one or more of the related functions. . . shall be responsible to the Institute for any failure of such firm or corporation to abide by . . ." the Institute's Rules of Professional Conduct.[79]

(c) Architecture

1. Competence

The Architect's Act limits the practice of architecture to licensees, and provides penalities for any unauthorized person ". . . who holds himself out as an architect . . . ."[80] The Registration Board of the Ontario Association of Architects (O.A.A.) has adopted ethical rules designed to reinforce the statutory ban on unauthorized practice. The Board's Regulation 35 prohibits a member of the O.A.A., the regulatory body, from entering ". . . into any arrangement by which anyone not a member may be enabled either directly or indirectly to practice architecture."[81] The Board has adopted regulations which implement this general ban on professional association with non-architects. Regulation 33 (b) prohibits a member from entering into a partnership with unlicensed persons for the purpose of offering architectural services to the public; this rule does, however, contain an express exemption for members of the Association of Professional Engineers of Ontario and ". . . any other approved allied profession."[82] Thus Regulation 33(b) effectively restricts the ownership and management of multi-disciplinary organizations offering architectural services to licensed architects and engineers. No

other "allied professions" have been approved for partner status by the Registration Board. Regulation 33(b) constitutes an impediment to the organization of multi-disciplinary practice because it relegates persons with allied professional and occupational skills (e.g. landscape architects, surveyors, contractors, etc.) to the status of employees in any multi-disciplinary firm offering architectural services.

2. Independence

The Architect's Act prohibits the practice of architecture through a professional corporation. Proposed amendments to the Act would allow corporate practice, subject to strict constraints on beneficial ownership designed to insulate architects from the control of non-architect investors. Section 15(b) of the draft Act would permit a corporation to market architectural services on the condition that ". . . ownership of the corporation is held by members to an extent not less than that set forth in the regulations."[83] Presumably, any regulations promulgated under this provision would establish a minimum ownership floor that would ensure solid majority control by architects. Such a beneficial ownership requirement would have an indeterminate negative impact on the prospects for organizing multi-disciplinary corporate firms employing architects and other design professionals.

The Registration Board has also sought to safeguard professional independence by forbidding members from engaging in public practice as employees of any firm owned by unlicensed persons.[84] The Regulations do, however, permit an architect to accept employment with a consulting engineering firm or corporation which performs architectural services ancillary to the practice of professional engineering. These rules complement Regulation 33(b), which limits membership in a firm providing architectural services to the public; their combined effect is to preclude any form of multi-disciplinary practice which involves ownership by persons who are not licensed architects or engineers.

The Regulations do, however, allow architects to perform service for non-architect clients who in turn offer architectural services to the public in the form of package "design-build" services. Thus, an architect may practice, on a fee-for-service basis, on behalf of a contractor-client offering a "design-build" service, subject to the following restrictions prescribed by the Regulations: (1) the architect must inform the project owner in writing that he is responsible only to his contractor client; and (2) the architect must not approve accounts or issue certificates for payment in respect to the contractor's work.[85] These limitations are designed

to prevent any confusion concerning the identity of the architect's client. It should be emphasized that the Regulations prohibit an architect from accepting employment on the staff of a contractor offering "design-build" services which include the in-house provision of architectural services to the public.

The Regulations seek to safeguard professional independence by policing conflicts of interest which may arise from occupational roles incompatible with the practice of architecture. These rules do not prohibit an architect from engaging in potentially incompatible acitivities, but rather prescribe a strict separation of these activities from his professional practice. Thus, an architect may carry on a general contracting business or provide construction management services while engaged in the practice of architecture, but he is expressly prohibited from performing these related functions on a building project on which he has also contracted to perform architectural services for the project owner.[86] It should be noted that the Regulations permit an architect to supply architectural services to a contracting firm, owned by him, which markets "design-build" services. The architect performing services for his own contracting firm must, of course, comply with the regulations designed to protect consumers of "design-build" services.

The effect of these rules governing incompatible occupations is to preclude the organization of multi-disciplinary firms which would provide a package of services, combining contracting, construction management and general architectural services, directly to project owners.

3. Integrity

The Registration Board has not adopted rules which would restrict the advertising of multi-disciplinary services. It should be noted, however, that the Board's Regulations are virtually silent in regard to any form of advertising, with the exception of signs on project sites.[87] One writer has suggested that this silence manifests a tacit assumption that all advertising not expressly permitted is proscribed. A more plausible explanation for the Board's inaction in the area of advertising is the relative unimportance of advertising in the marketing of architectural services.

The Regulations do, however, forbid the solicitation of professional work under circumstances in which the soliciting architect ". . . knows or has reason to believe that another member has been retained[88] . . ." Multi-disciplinary practice may create some opportunities for the circumvention of this limitation on solicitation; an architect might encourage lay partners or associates to approach prospective clients whom he knows have obtained

the services of another architect. The most straight-forward solution to this problem would be to extend the reach of the Board's Regulations to police the promotional activities of all members of multi-disciplinary firms.

(d) Engineering

1. Competence

The Professional Engineers Act[89] restricts the "practice of engineering" to licensed persons and organizations, and prohibits unauthorized practice. The Council of the Association of Professional Engineers of Ontario (A.P.E.O.), the regulatory body, has not, however, attempted to foreclose opportunities for unauthorized practice by restricting the professional associations of licensed engineers. The A.P.E.O.'s Code of Ethics does not prevent a professional engineer from entering into a partnership with lay persons for the purpose of offering engineering services to the public. Many professional engineers practice in partnership with a broad assortment of persons from the allied design professions and occupations. These multi-disciplinary firms offer a broad array of services related to the design-construction field; the brochure of one large Toronto firm lists services in principal fields of activity including engineering, surveying, planning, urban design, and project management.[90]

2. Independence

The Professional Engineers Act permits the corporate practice of professional engineering, subject to restrictions designed to ensure regulatory control by the A.P.E.O. Section 20 of the Act provides that a corporate practice must be conducted under the supervision of a licensed engineer, who may be either a director or employee; the section also provides that it is the supervising engineer's responsibility ". . . to ensure that this Act, and the regulations and the bylaws are complied with . . ."[91] Section 20 also imposes a licensing requirement to provide the A.P.E.O. with a mechanism for enforcing compliance with the professional conduct requirements of the Act and Code of Ethics. A corporation or partnership must obtain a "certificate of authorization" from the A.P.E.O. before offering engineering services to the public; the A.P.E.O. is authorized to revoke the certificate of any firm whose partners or employees violate the provisions of the Act or Code.[92]

The Act's "certificate of authorization" system is an imaginative response to the problem of safeguarding professional independence and compliance with ethical rules, while preserving sufficient flexibility to permit the organization of multi-disciplinary practice. Thus, a professional engineer can engage in public practice as a salaried employee of a partnership or corporation owned

by non-engineers. The only requirement imposed by the Act is that both the employed engineer and the organization employing him must hold licenses issued by the A.P.E.O. and comply with its rules governing professional conduct.

The A.P.E.O.'s Code of Ethics contains several provisions concerning occupations or businesses which may be incompatible with the practice of professional engineering. In contrast to the ethical rules governing architectural practice, the Code does not prohibit the concurrent performance of functions which may create conflicts of interest with engineering clients, but rather requires that an engineer ". . . disclose immediately any interest, direct or indirect, which might be construed as prejudicial to his professional judgment."[93] Thus, an engineer may both perform professional engineering services and act as general contractor on the same construction project if there is full disclosure of the potential conflict of interest to the owner-client.[94]

3. Integrity

The A.P.E.O.'s Code imposes no substantive restrictions on advertising or solicitation. Professional engineers practicing in multi-disciplinary firms circulate brochures and promotional materials which publicize a broad assortment of services, including engineering services. The Code's only provision dealing with the solicitation

of business provides that an engineer should ". . . not attempt to gain an advantage over other members. . . by paying a commission in securing professional engineering work."[95] Under section 20 of the Act, the A.P.E.O. could discipline any multi-disciplinary firm which permitted its non-engineer owners or employees to pay a commission or finder's fee to promote its services.

D. A Catalogue of General Policy Considerations

One fact emerges from the analysis of the four existing schemes which has profound implications for the design of an appropriate regulatory policy - the four schemes differ markedly from one another in their relative weighting of regulatory goals, and in their choice of implementation strategies. For example, the Law Society of Upper Canada has emphasized the importance of safeguarding professional independence , and has sought to implement this goal by sweeping prohibitions on professional association with non-lawyers. On the other hand, the regulatory policies of the Association of Professional Engineers of Ontario place much less emphasis on the goal of promoting professional independence; the A.P.E.O. has eschewed a strict preventive approach, relying instead on its "certificate of authorization" scheme to police professional associations between engineers and unlicensed persons. These differences in the weighting of regulatory goals and in the selection of

implementation strategy arise out of differences in the basic conditions which shape professional and client behavior in each of the four markets. The four professional service markets differ markedly in relation to important structural features such as the relative sophistication of the profession's clientele and the relative importance of the agency function in the profession's work. This diversity of professional service markets, reflected in the regulatory systems which have evolved to govern them, precludes any unitary or "omnibus" policy response to the complex and interrelated regulatory issues arising from the multi-disciplinary organization of professional work. Multi-disciplinary collaboration among some professions and occupations will generate issues of general policy and institutional design which may be irrelevant to multi-disciplinary practice involving other professions and occupations. Appropriate regulatory policies must proceed from a more particularized or fact-sensitive approach.

The remainder of this paper attempts to develop a comprehensive catalogue of decisional factors designed to provide guidelines for the identification and resolution of the primary policy issues. The analytic framework which follows identifies the basic cost and benefit considerations arising from multi-disciplinary innovation; it also attempts a critical evaluation of the existing

regulatory constraints on multi-disciplinary practice, and suggests modifications in existing rules which may lead to a more optimal balance of costs and benefits.

1. Benefits

As outlined earlier in the paper, multi-disciplinary methods of organizing the delivery of services may benefit consumers in two general ways: (1) they may reduce the costs of existing types of services; and (2) they may result in the creation of new services, either through advances in quality or through the introduction of unique forms of service.[96] Moreover, it was asserted that the benefits from both cost-reduction and service quality innovations should be linked to the two general components of the professional relationship: (1) the agency function; and (2) the service function. In short, multi-disciplinary organization may reduce the costs and improve the quality of those aspects of professional work involving the identification and solution of client problems; it may also reduce the costs and improve the quality of the actual technical services (e.g. drafting a will, designing a structure, etc.) demanded by clients. A more detailed specification of these efficiencies and their relationships to particular types of multi-disciplinary practice is necessary to provide the

reader with a general understanding of how and when these consumer benefits may be realized.

(a) Substitution of Functions

Multi-disciplinary organization may permit the realization of efficiencies through the allocation of task responsibilies on the basis of comparative advantages in aptitude or experience which may not be reflected in the existing statutory definitions of the professional groups' licensed functions. For example, an architect practicing in a multi-disciplinary firm might discover that his engineer-partners are more proficient at some aspects of structural design, even though these design functions arguably fall within the "practice of architecture" as defined in The Architect's Act.[97] This type of reallocation of functions between architects and engineers could reduce the costs of design services, or increase their overall quality. It should be noted that The Architects Act and Professional Engineers Act recognize the desirability of limited reassignment of responsibility for design work by providing reciprocal exemptions from their prohibitions on unauthorized practice; engineers, for example, are permitted to provide architectural services incidental to the practice of professional engineering.[98]

The delegation of more specialized tasks from professional to paraprofessional workers is an increasingly widespread method of achieving economies of functional substitution. Improvements in costs efficiency or service quality can be attained through the

use of subordinates and assistants to perform tasks formerly assigned to professional workers. There is, however, a rather subtle distinction between the reassignment of task responsibilities within a work group and the transfer of functions to paraprofessionals. This distinction is that paraprofessionals perform their substitute functions under the supervision of a professional who bears ultimate responsibility for the final output. Thus, the reallocation of tasks among workers in a multi-disciplinary firm may, but need not, entail a corresponding reallocation of control over the work and ultimate responsibility to the client. In short a multi-disciplinary firm may achieve substitution efficiencies by relegating some professional or non-professional workers to subordinate or paraprofessional status, or it may organize its multi-disciplinary practice by conferring co-equal or autonomous status on its professional and non-professional workers. These alternative methods of achieving substitution efficiencies through multi-disciplinary practice are treated very differently under the existing regulatory schemes. None of the regulatory systems prevent a professional from employing other types of professional or non-professional workers to assist him in paraprofessional roles, nor do they restrict his discretion in the assignment of tasks to his unlicensed assistants. The only substantive

limitation on this type of multi-disciplinary practice is that the employing professional remains responsible for the quality of the services provided. Thus, a lawyer may employ an accountant and a life insurance agent to assist him in his estate planning practice, and may allocate tasks to his non-lawyer assistants which arguably constitute the practice of law. The lawyer, however, is ulitmately responsible for the quality of services provided. On the other hand, the lawyer is prohibited from conferring co-equal or autonomous status on his unlicensed associates by entering into a partnership with them. In their role as partners or co-equals within the multi-disciplinary firm, they are prohibited from performing functions which might constitute the practice of law.

Most substitution efficiencies will involve exploiting opportunities for greater specialization of effort within the multi-disciplinary firm that cannot be achieved through the employment of paraprofessionals who lack specific professional or occupational skills. This has two important implications for regulatory policy. First, the prospects for substitution efficiencies from multi-disciplinary practice are probably limited. They will be defined by narrow areas in which the skills of particular professions and occupations overlap in some substantial way. Thus, lawyers and accountants are likely to reallocate task responsibilities only in

fairly specialized areas of multi-disciplinary practice, like tax and estate planning, where their skills and training overlap. Second, most forms of multi-disciplinary practice involving substitution of functions should entail only negligible risks that unqualified associates will perform incompetently. The close integration of efforts within a specialized area of practice would provide ample opportunity for quality control through consultation between licensed and unlicensed co-workers.

Finally, it is unlikely that substitution of task responsibility within the multi-disciplinary firm will improve performance of the agency function. Substitution of the problem solving skills of one professional for those of another, even within an area of substantial overlap, will not substantially increase the probability of qualitative improvement in the identification and solution of client problems. More significant improvements in the agency function will be realized from the joint provision of complementary problem-solving services.

(b) Complements In Production and Consumption

While opportunities for the realization of substitution efficiencies may be rather limited, there may be substantial cost savings from the joint provision of many types of professional and non-professional services through multi-disciplinary firms. Professional services are complements in production when they can

be jointly provided at lower cost than when produced separately.[99] Technical interdependence can arise from economies in the acquisition and use of information. For example, the services of both lawyers and accountants are required for the planning and incorporation of a new business enterprise. Much of the information which the lawyer must obtain from the client and from other sources concerning the business objects of the firm, its financial structure, etc., will be of equal importance to the accountant in advising on tax consequences or designing an accounting system for the firm. Collaboration between the lawyer and accountant, practising as a multi-disciplinary team, would permit the reduction of transaction costs in acquiring the information e.g. the lawyer could interview the client and transmit the appropriate data to the accountant.

There may also be payoffs from multi-disciplinary practice when complex interrelationships between services necessitate close coordination of service providers. For example, the design of a large commercial building may require the services of architects and structural and mechnanical engineers. The formulation of an integrated design requires a substantial coordination of effort among the various design professionals involved in the project; there may be substantial savings in time and money from structured

collaboration within a multi-disciplinary firm. Centralized managerial control over coordination between related service functions may also reduce the risks of error and improve overall service quality.

Complementarities in the acquisition and use of information, and in the coordination of effort should improve the performance of both the agency and service functions. Multi-disciplinary collaboration may, in addition, generate synergistic gains in the identification of client needs and the formulation of appropriate solutions. Complementarities in the problem-solving skills of related disciplines may lead to new perceptions concerning client needs. For example, Professors Touhy and Wolfson have identified one important source of inadequate performance - professional mis-specification of the types of information deemed relevant to the client's problem.

> "The professional's definition of information requirements is based on his perception of the client's interest, but this perception may itself be biased. In other words, the types of information actually used by the decision-maker may not represent all the relevant aspects of his client's real interests. There may be some aspects of problems and potential solutions, such as the client's anxiety for example, that a professional might not adequately consider in his decision-making."[100]

Team effort is likely to promote a more comprehensive definition of client problems; one writer has asserted that innovation in problem-solving has been the crucial causal factor in the tremendous growth

of multi-disciplinary practice in the design professions.[101]

Finally, multi-disciplinary practice may reduce the market transaction costs of service consumers. Professional and non-professional services may be complements in consumption to the extent that their joint provision reduces the consumer's costs of searching. Group practice in the health disciplines, for example, provides the convenience of access to specialized forms of service in conjunction with general treatment and diagnostic services.[102] Moreover, multi-disciplinary practice may reduce the amount of time that a client must spend in communicating his needs and preferences to service providers; integrated practice permits joint consultation and centralized interviewing. It should be emphasized that the professional client's costs of searching, communicating work specifications, and, in some cases, contract negotiation may often be substantial, especially when complex interrelated services are consumed. The reduction of these costs of consumption may be a primary source of efficiencies from multi-disciplinary innovation.

(c) Other Efficiencies

Other types of economies may be realized through multi-disciplinary practice, largely because of its relationship to firm size. The geographic dispersion of professional service consumers

imposes strict limits on firm size; in less densely populated areas, professionals often practise singly or in quite small firms. If many regional markets will not support a traditional law or accounting firm large enough to exploit all possible managerial and administrative efficiencies, multi-disciplinary organization may allow a firm to attain the minimum optimal size. This assertion is subject to a number of qualifications which suggest a weak relationship between scale economies in management and administration and multi-disciplinary practice. First, scale economies in administrative and support-staff functions are rather speculative for most kinds of professional practice; they depend on many unique variables, such as the specific nature of the practice, type of client, etc. Second, there is no legal impediment to joint utilization arrangements between separate professional firms to reduce the costs of administrative and support services. If there were substantial economies to be realized in this area, one would expect cost-sharing agreements between unaffiliated professionals to be much more prevalent than they are now, especially in hinterland areas.

2. Costs

An analysis of the costs or general disadvantages which may

result from multi-disciplinary practice requires some careful attention to the question of designing regulatory systems for professional service markets. More specifically, the issue is the appropriateness of a preventive or prophylactic approach to the control of professional conduct.[103] The ethical codes and regulations of the four professions, in varying degrees, emphasize the importance of foreclosing opportunities for dishonesty and incompetent practice. Yet, this rigorous prophylactic approach imposes substantial costs on consumers and professionals because it also forecloses opportunities for innovative behavior. There are strong arguments in favor of a preventive approach. Sole reliance on liability rules to control professional conduct may result in suboptimal deterrence of the dishonest or incompetent. Public enforcement through direct output monitoring would be costly and, perhaps, largely futile for types of violations which are extremely difficult to detect. Professional clients, who possess limited ability to evaluate service quality, cannot generally be relied upon as effective private enforcers because they will also often be unable to identify and sue violators. On the other hand, when enforcement difficulties are not acute, perhaps because of a higher level of client sophistication, the preventive approach

should be subjected to critical scrutiny. Moreover, when the choice of preventive strategies entails some substantial sacrifice of efficiencies, a more refined approach to the welfare trade-off implicit in the design of regulatory mechanisms seems desirable. The relaxation of a specific preventive rule to promote the realization of substantial efficiencies may make sense, in spite of detection problems, if the resulting probability of violation and consequent consumer injury is low. This sort of decision calculus requires a particularized and fact-sensitive analysis; in some situations, the preventive approach may entail costs far in excess of the consumer protection benefits it generates.

(a) Competence

1. Unauthorized Practice

The Law Society of Upper Canada and the O.A.A. have adopted rules prohibiting partnerships with unlicensed persons to safeguard consumers against practice by incompetent individuals; these rules do not prohibit the employment of professional or non-professional workers to assist in professional practice, providing their activities are supervised by a licensed practitioner.[104] As indicated earlier, these preventive rules, designed to foreclose opportunities for unauthorized practice, impede the organization of multi-disciplinary

practice in two ways. First, lawyers and architects are, of course, prohibited from public practice as partners in a multi-disciplinary firm. Second, other professionals such as accountants and engineers, who are not prohibited from practice with other professions and occupations, are relegated to permanent employee status; this may constitute a substantial disincentive for many professionals who would be willing to participate in multi-disciplinary practice if accorded co-equal partner status.

Do the benefits from a strict preventive approach to policing professional competence justify these substantial restraints on multi-disciplinary practice? It should be emphasized that many forms of multi-disciplinary practice are unlikely to involve lay partners in unauthorized practice. Most of the efficiency gains from collaboration between lawyers and accountants or architects and engineers arise from complementarities in production and consumption. Moreover, complementary relationships are most likely to be the basis for joint practice involving professionals and non-professionals. For example, partnerships between lawyers and life insurance agents will be based on complementary skills and tasks relating to the provision of estate planning services. The same relationships are likely to hold true for architects and other persons in design-construction occupations, such as planners

or contractors. The simple point is that a strict preventive approach to policing competence precludes many multi-disciplinary relationships which involve negligible risks of unauthorized practice.

There may be some types of multi-disciplinary practice in which unlicensed partners will assume the task responsibilities of licensed professionals. But this sort of reassignment of task responsibility should occur in areas of overlapping expertise, and, more importantly, it is most likely to involve a further refinement or specialization of function within the firm. There does not appear to be any likelihood of multi-disciplinary work involving a possible violation of the unauthorized practice rules which does not possess these two key characteristics - overlapping skills and close integration of functions.

The presence of substantial overlaps in skills between certain professions and occupations suggests that the current statutory definitions of the licensed professional functions may impede beneficial innovation. Some licensed functions, such as the practice of law, are not even defined by statute; those which are statutorily defined, for example engineering, are described in ambiguous language.[105] The open-ended nature of these statutory and case law definitions creates many possibilities for technical or borderline violations

of the unauthorized practice rules. In one case, these conflicts over exclusive rights to practice have been resolved by express statutory exemptions; thus, the overlapping nature of architectual and engineering functions has been recognized by reciprocal statutory exemptions, and by an additional exemption in the O.A.A. Regulations permitting architects to form partnerships with engineers.[106] Similar conflicts over rights to practice are often resolved by unwritten convention. Thus, lawyers and accountants have achieved a tacit understanding concerning the appropriate scope of accounting services in the taxation and business planning areas.[107] The simple point is that multi-disciplinary practice between partners with overlapping skills will not generally impair the quality of the services performed. In other words, if consumer welfare is the primary regulatory objective it is necessary to distinguish between technical violations of the unauthorized practice rules, and the provision of services by incompetent persons.

Multi-disciplinary practice involving reassignment of task responsibility will provide additional protection from incompetent performance because of the close integration of functions between licensed and unlicensed persons. Collaboration between partners with overlapping skills should result in greater specialization of effort. This increase in functional specialization will require

cooperation and substantial integration of effort within the multi-disciplinary firm. These close working relationships should provide ample opportunities for quality control and monitoring of the performance of unlicensed associates by qualified practitioners. In short, the organization of work within the multi-disciplinary firm should be sufficient to protect consumers from incompetence. Moreover, licensed partners have a strong incentive to monitor the performance of their unlicensed partners. All members of the firm will be jointly and severally liable for any tortious harm arising from the services rendered by the lay partner.

On balance, it would seem that the costs from restrictions on multi-disciplinary innovation far outweigh the consumer protection benefits provided by the existing prohibitions on professional partnerships with unlicensed persons. The technical problem is that even if these ethical rules were repealed, non-licensee partners in multi-disciplinary firms would still be subjected to the risk of prosecution for unauthorized practice. One solution would involve redrafting the statutory definitions of the various licensed functions to adequately reflect the areas of expertise shared by other professions and occupations. This seems both impractical and highly undesirable. It would be impractical because it would require detailed specification of all the tasks or functions within areas of

expertise shared by many different professions and occupations. It would be undesirable because shifts in client needs or advances in knowledge may rapidly transform any static allocation of exclusive rights to practice into an impediment to dynamic change and innovation in the delivery of services. The preferred solution is to provide members of multi-disciplinary firms with a statutory defense to an action for unauthorized practice. If the unlicensed partner could prove that he performed the licensed functions in collaboration with a qualified professional, he would have a complete defense. This approach would remove the necessity for a detailed reformulation of the unauthorized practice provisions.

2. Negligence Liability

Rules governing liability for negligence in the performance of professional services affect service quality through deterrence of the incompetent practitioner. The traditional rule of enterprise liability also deters professionals from entering into partnerships with incompetent colleagues: all members of a partnership are jointly and severally liable for harm caused by a partner's negligence. The enterprise liability rule may impede the organization of multi-disciplinary practice. Partners may be unable to assess the competence or skill of other members who possess different

professional or occupational qualifications; they would also be unable to monitor the performance of other partners working in areas distinct from their own. As a result, they may be unwilling to assume the uncertain risks of legal liability for their colleagues' conduct.

It is doubtful that uncertainties in regard to colleague competence will substantially dampen incentives for multi-disciplinary practice. The disincentive effect of the enterprise liability rule can be neutralized through professional liability insurance and indemnification contracts between the members of multi-disciplinary firms. Moreover, the costs of relaxing the enterprise liability rule for multi-disciplinary firms may be substantial. If multi-disciplinary firms assign licensed professional functions to unqualified members, the licensed partners should be responsible for monitoring the performance of their unlicensed colleagues. They will have strong incentives to perform properly this monitoring function if they share full legal responsibility for the final output.

3. Dually-Qualified Practitioners

Some writers have opposed the concurrent practice of two professions by dually qualified individuals on the ground that it is simply impossible to maintain competence in two professional disciplines simultaneously.[108] These authors invariably cite the rapid

expansion of technical knowledge within the major professions in support of their claim. It would seem that the risks of incompetence from persons possessing dual qualifications are negligible. The arguments based on increases in technical complexity are generally applicable to persons who limit practice to any one of the major professions. For example, most would agree that it is undesirable for the average corporate lawyer to dabble in complex criminal litigation, yet his general license to practice law permits him to do so. Most ethical codes enjoin professionals to undertake only those engagements which their training and current practice render them competent to perform, but these ethical restraints are equally binding on dually qualified practitioners.[109] Moreover, the market protects consumers from professional dilettantism, even when it operates imperfectly. The same market incentives which restrain the corporate lawyer from trying criminal cases encourage the accountant-lawyer to limit his practice to those specialized fields in which his dual skills overlap. The dually qualified practitioner maximizes his return by providing specialized inter-disciplinary services, not by merely expanding the range of services provided to encompass two disciplines. Once the dually qualified practitioner is correctly perceived as an inter-disciplinary specialist, the regulatory issues in regard to competence are the same as those

relating to persons specializing within a single profession. These issues, except the question of specialty advertising, are beyond the scope of this paper.

(b) Independence

1. Differential Access to Incorporation Privilege

The differential treatment of the incorporation privilege among the four professions has the indirect effect of impeding multi-disciplinary practice. For example, engineers enjoy the privilege of corporate practice, while architects do not. As a result, an engineer who wishes to engage in multi-disciplinary practice with architects must sacrifice the benefits of corporate practice; if the incorporation privilege entails substantial tax or other business advantages, the engineer is deterred from multi-disciplinary innovation beneficial to consumers.

It should be emphasized that this multi-disciplinary practice dimension of the incorporation issue does not necessarily devolve into an argument favoring universal extension of the incorporation privilege; it is merely an argument for equal treatment, which could be accomplished by withdrawing the privilege from groups who currently possess it. Moreover, the adverse impact from the differential extension of the privilege could be minimized by ensuring that professions with closely related or complementary functions receive

equal treatment. Thus, uniform treatment among architects and engineers would be desirable, but differential treatment between architects and lawyers is unlikely to impede any significant multi-disciplinary activity, at least in the near future. While the resolution of the incorporation issue should primarily turn on the substantive considerations analyzed in Professor Prichard's paper,[110] any proposal to continue the existing differentials should be evaluated in respect to its potential negative impact on multi-disciplinary innovation.

2. Corporate Practice and Employed Professionals

With the exception of the A.P.E.O., the self-regulating bodies have adopted a rigorous preventive approach to the policing of professional independence. This regulatory approach has been implemented through ethical rules designed to insulate professional-client relations from non-professional control or direction. Thus the Law Society of Upper Canada, the P.A.C. and the O.A.A. currently proscribe corporate practice on the ground that unlicensed shareholders and directors may seek to direct the activities of employed professionals in a manner potentially detrimental to client interests. While some regulatory bodies have supported the repeal of statutory bans on corporate practice, they have advocated strict restraints on nonprofessional ownership of professional

corporations. For example, the O.A.A. has proposed constraints on share ownership to ensure that corporations offering architectural services to the public are controlled by a solid majority of licensed architects. This regulatory concern with insulating the professional from non-professional control also serves as the rationale for restrictions on public practice by employed professionals. The Law Society's ban on sharing legal fees with unlicensed persons prevents lawyers from accepting employment with any organization offering legal services to the public which is owned, either wholly or partially, by non-lawyers. The O.A.A. Regulation contain a similar rule which forbids architects from engaging in public practice as employees of any firm owned by non-professionals.

These preventive rules designed to safeguard professional independence impose severe restrictions on multi-disciplinary practice. They have the effect of relegating the members of other professions and occupations to permanent employee status in corporations and partnerships offering legal or architectural services to the public. While it is difficult to assess the magnitude of these disincentives to multi-disciplinary practice, they may be substantial for more experienced or talented workers who would be more likely to feel that their contributions to the firm merited co-equal status and a share of the profits. Moreover, it may be undesirable to permit

multi-disciplinary practice by firms which relegate all members of a constituent professional or occupational group to employee status. If the practice of the firm involves the assignment of licensed professional functions to unlicensed members, it is particularly important that some partners or owners be licensed to perform those delegated functions. This is because the enterprise liability rule creates strong incentives for the licensed partner or owner to monitor the performance of his lay colleagues. While licensed employees could be assigned this monitoring function, they do not share legal responsibility for the conduct of their lay colleagues and, therefore, have much weaker incentives to ensure that the delegated functions are properly performed.

Are the costs imposed by existing ethical contraints on non-professional ownership justified by the benefits to consumers from preservation of professional independence?

There is little question that an employee-employer relationship between the professional and a third party dilutes the professional's independence in his dealings with clients. A contract of employment confers legal authority to supervise and direct the employee's activities. There is even some empirical support for the proposition that employed professionals are generally more responsive to employer goals and preferences than the needs and preferences of the

firm's clients.[111] The degree of control actually exercised over the professional employee will depend on institutional and behavioral variables. For example, professionals will be more independent of employer control when the internal organization of the firm is collegial, as opposed to hierarchical and bureaucratic.[112] Without substantial empirical investigation, it would be very difficult to predict how variables such as institutional structure would affect the independence of employed professionals within a multi-disciplinary firm. Moreover, even if institutional and behavioral conditions which would minimize the dilution of independence could be specified, it would be difficult to predict how such preventitive constraints would affect the efficiency-generating potential of multi-disciplinary practice.

The fact that multi-disciplinary practice might result in the dilution of professional independence is not, however, a sufficient justification for existing prohibitions on non-professional ownership. The regulatory system's concern with professional independence is purely instrumental; its purpose is the promotion of consumer welfare. Dilution of the employed professional's independence only provides a justification for regulatory intervention when the interests of the non-professional employer diverge in some significant way from the interests of the

firm's clients. The market system, to the extent that it operates properly, is an institutional arrangement which ensures an identity of interests between consumers and suppliers of professional services. Few would doubt that if the price mechanism operated perfectly, non-professional employers would be as responsive to the needs of consumers as their professional counterparts. Thus, the traditional argument against non-professional ownership devolves into an assertion that lay entreprenuers are more likely than professional owners and managers to take advantage of the opportunities for exploiting consumers which arise from the peculiar imperfections of the professional services market. We possess no empirical evidence which suggests that non-professional employers would be more likely than their professional counterparts to exploit consumer ignorance by supplying poor quality or unneccessary services. Rather, the profit-maximization hypothesis would indicate that non-professional owners would be neither more nor less likely than professional owners to exploit client ignorance. If we accept the applicability of the profit-maximization hypothesis to professional services markets, we arrive at the last leg, the real crux, of the traditional argument against non-professional control.

The traditional argument is erected on the assumption that the professional owner-manager is, unlike his non-professional counterpart, not a full-fledged entreprenuer; in other words, it assumes that the professional

owner pursues altruistic goals linked to client welfare even when these altruistic goals conflict with the goal of profit maximization. This assumption of altruism is, of course, in conflict with the behavioral assumption underlying the profit maximization hypothesis, but it would be incorrect to reject that traditional argument out of hand.[113] It should be emphasized that the altruistic content of ethical codes is a specific institutional response designed, in some measure, to fill the gap created by the failure of the price system in professional service markets. The extent to which professional training and culture emphasizing adherence to altruistic ethical principles actually neutralizes entrepreneurial instincts is an empirical question. Since we lack knowledge of the effects of professional culture and ethical codes on the pursuit of the profit maximization objective, it is very difficult to predict the potential costs to consumers from permitting non-professional ownership of professional firms. The primary factor in any assessment of the potential costs from relaxing existing constraints on non-professional ownership is the strength of the profit maximization hypothesis as applied to professional service markets. Since this hypothesis is a very powerful tool for explaining and predicting entrepreneurial behavior, it is likely that the consumer protection benefits generated by the existing constraints are not substantial.

On the other hand, if participation in a professional culture emphasizing altruistic ethical precepts does constrain entreprenurial behaviour, it should be recognized that the risks to consumers from mixed ownership and control in many types of multi-disciplinary firms would be negligible. This would be the case when all or most of the owners of a multi-disciplinary firm are members of professional groups which share a commitment to cultural values promotive of an altruistic concern for client welfare. There is a substantial formal similarity among the principles and values expressed in the ethical codes of the four professions. It is possible that this formal similarity may operate in practice to secure that identity of values and goals between the employed professional and his employer (a member of a different progession) which would safeguard clients from the risk of conflicting loyalties. This suggests the possibility of separate regulatory treatment for mixed firms comprised of combinations of licensed professionals, and those involving collaboration between professionals and non-professional workers. This approach will be considered as a possible exception to the beneficial ownership proposals which follow.

In the final analysis, it would appear that the optimal balance of costs and benefits lies in the direction of relaxing the existing restrictions on non-professional ownership. It would be desirable, however, to retain minimum beneficial ownership requirements for both partnerships and corporations. At least ten percent of the shares of any multi-disciplinary firm should be held by a person (or persons)

who is licensed to provide the professional service offered by the firm. Thus, a multi-disciplinary firm offering both legal and public accountancy services would be required to maintain ten percent share ownership be licensed lawyers, and ten percent by licensed accountants. Similarly, at least one partner of any multi-disciplinary firm should be a person who is licensed to provide the professional services offered by the firm. These rules should contain a specific exemption for dually qualified practitioners. Thus, a multi-disciplinary firm offering both legal and public accountancy services could comply with the minimum ownership rules by having one partner qualified to practice both law and public accountancy.

These minimum beneficial ownership requirements seem desirable for two basic reasons. First, it should ensure that employed professionals have a substantial representative voice to convey their particular altruistic (professional) point of view to management. The minimum ten percent/one partner requirement ensures that at least some of the owners will share the professional values and goals which arguably provides some protection for consumers. This is an obvious tradeoff problem; it is possible that any significantly greater minimum ownership requirement (e.g. actual majority control) would create substantial impediments to multi-disciplinary innovation. The second justification for minimum ownership requirements is related to the importance of the enterprise rule in protecting consumers of multi-disciplinary services. As has been emphasized earlier, if the practice of a multi-disciplinary firm involves the assignment of licensed professional functions to unlicensed colleagues, it is particularly important that some persons holding a substantial ownership interest in the firm possess a licence to perform those delegated functions. This is because the enterprise liability rule generates strong incentives for the licensed owner to monitor the performance of his unlicensed

colleagues. These risks of legal responsibility for the conduct of unlicensed partners and employees are not shared by licensed employees.

Since the ownership constraints proposed would, in some cases, limit the possibilities for beneficial innovation, it may be desirable to consider two types of exemptions from the "10%/one partner" rule. The first type of exemption would provide separate treatment for multidisciplinary firms in which at least 10% of the ownership interests were held by licensed professionals. These shareholders or partners might be members of one or several recognized professional groups. The argument would be that since all licensed professionals share altruistic ethical values arising from similar occupational cultures, clients receive little additional protection from ownership constraints aimed at ensuring that each constituent professional group is formally represented in the management of the firm. The difficulty with this argument, at least to the extent that it supports a blanket exemption, is our lack of knowledge concerning the practical equivalency of the various ethical codes. While the codes of the four professions considered in this analysis formally address the same ethical problems, it is impossible to conclude, without information on how specific ethical conflicts are dealt with in practice, that the professional norms of the licensed groups are in fact functionally equivalent. It should be recognized that the occupational context in which specific ethical conflicts arise may have features which are peculiar to each profession. If these environmental conditions have a substantial effect on the resolution of ethical problems, there may be a significant amount of diversity among professional groups in the practical application of

formally identical ethical rules. Therefore, the formulation of beneficial ownership exemptions for professionals sharing equivalent ethical norms should proceed on a case-by-case basis. This task should be reserved for a regulatory authority with access to the information and expertise required to give detailed consideration to those specific types of multi-disciplinary practice in which such an exemption may be appropriate.

The second type of exemption would apply to types of multi-disciplinary practice in which the imposition of a "10%/one partner" constraint would create a substantial barrier to the efficiencies of financing the firm by the use of a widely dispersed ownership structure. Since most types of professional practice are not capital intensive, this will not be a widespread problem. There may, however, be certain cases, such as professional engineering, in which any significant beneficial ownership requirement (e.g. a 10% rule) would preclude the realization of efficiencies from a widely-held capital structure. The optimal solution to this problem would be the formulation of limited exemptions aimed at specific types of multi-disciplinary practice in which the beneficial ownership rules imposed efficiency losses in excess of their consumer protection benefits. In some forms of multi-disciplinary practice, it may be demonstrated that the consumer protection benefits created by ensuring professionals a significant voice in management are negligible. It may be concluded that an adequate level of protection is achieved through reliance on the enforcement of prohibitions on unethical conduct; this is the position implicitly adopted by the A.P.E.O., which currently imposes no beneficial ownership constraints on professional engineering firms. Since it can be safely assumed

that only widely-held corporations (not partnerships) would enjoy significant efficiencies in capital formation, it might be desirable to condition the grant of an exemption on the reservation of at least one corporate directorship for a licensed professional. This would ensure at least some representation of an altruistic professional viewpoint in the higher levels of corporate policy-making. In any event, the formulation of specific exemptions, with or without appropriate protective mechanisms, is a task best reserved for a regulatory body with the requisite expertise and detailed information.

(c). Integrity

Conflicts of interest between professional and client may dilute independence and interfere with the proper performance of the professional's agency function. Most of the regulatory bodies have eschewed a strict preventive approach to the policing of conflicts of interest; most ethical codes rely on rules which generally require the professional to disclose the conflict to his client, and obtain the client's consent to the continuance of the professional relationship. A strict prophylactic approach to the policing of conflicts of interest is inappropriate for two practical reasons. First, most conflicts are particularized or fact-specific so that comprehensive ex ante specification of general fact situations creating impermissible conflicts would be very difficult. Second, and more importantly, conflicts of interests differ widely in their degree of severity and their probability of occurrence. If conflicting interests are present, the degree of divergence may range from acute

to subtle; if the interests are only potentially adverse, the possibility of divergence may range from remote to inevitable. These factors weigh against the establishment of an inflexible rule forbidding a professional from undertaking or continuing a client relationship whenever his judgment may be adversely affected. On the other hand, some forms of practice, or professional and business associations, may create conflicts of interest sufficiently severe and pervasive to justify a preventive regulatory approach.

Multi-disciplinary practice may give rise to two general types of conflict of interest situations. The first type of conflict arises from the professional's ability to influence the client's demand for service. Since many forms of multi-disciplinary practice involve the marketing of complementary services, there is a risk that the professional will attempt to persuade the client to purchase complementary services which are either unnecessary or of inadequate quality. The second type of conflict situation arises from the potentially incompatible nature of particular services or functions which may be jointly provided by multi-disciplinary firms or dually qualified practitioners. These conflicts are particularized and limited to special fact situations. Since the cost and benefit considerations are different for each of these two categories, they will be separately discussed.

(1) Conflicts of Interest and Influence Over Demand for Complements

The problem of "feeding" lies at the heart of the ethical conflict arising from the multi-disciplinary practioner's opportunity to influence

client demand for complementary servies.[114] The label "feeding" is somewhat ambiguous; this ambiguity basically arises from the contradictory implications of the practice itself. Although the term "feeding" is invariably employed in a perjorative way, the practice of providing information concerning the availability and usefulness of complementary services is clearly beneficial to consumers. In short, "feeding", in its neutral sense, generates efficiencies in consumption, through the savings of costs related to searching and securing information about available services. There is, however, a negative side to the practice of "feeding"; this involves the risk that the professional will attempt to persuade the client to purchase complementary services which are either unnecessary or of inadequate quality. It should be recognized that the conflict of interest which arises from the multi-disciplinary practitioner's opportunity to influence client demand for complementary services is merely an extension of the conflict of interes between professional and client that results from the combination of agency and service functions in every professional relationship. As Professors Tuohy and Wolfson have noted:

> "The professional in his agent capacity can, at his discretion, create demand for his own services as a technical provider. As a supplier, he will wish to create demand at least as great as the amount he is willing to provide at the going price. As an agent for his client he may wish to demand somewhat less than this level of services. To the extent that the supplier's interests are introduced into the agent's decision-making process a serious distortion results."115

Thus, the linking of agency and service provider roles in every professional relationship reflects an implicit trade-off between the efficiency of combining complementary functions, and the risks to consumer welfare from the professional's conflicting interests. The identical regulatory problem is created by many types of multi-disciplinary practice. For example, lawyers and life insurance agents may establish a multi-disciplinary firm to offer comprehensive estate

planning services. If the firm also markets life insurance, the firm's members will be in a position to influence their client's perceived need for insurance coverage through their recommendations on an appropriate estate plan. Similarly, an accounting firm, providing both licensed and unlicensed accounting services, will be in a position to persuade its audit clients to purchase the non-licensed services offered by the firm. An auditor will often identity deficiencies in a client's accounting system, or needs for tax or management services in the course of performing an external audit; the auditor's "problem-spotting" function enables him to influence the client's perceived need for complementary services.

It would seem that the risk of dishonest or self-serving conduct arising from a firm's control or influence over client demand for complementary services is not substantial enough to warrant prohibition of multi-disciplinary practice. First, these conflicts simply will not arise in those types of multi-disciplinary practice which involve the provision of a unitary or integrated service. For example, a firm of lawyers and accountants offering tax planning and incorporation services would not be engaged in the provision of separate complements, but in the utilization of complementary skills to perform a single integrated service. The same consideration would generally apply to multi-disciplinary services in the design-construction field. Firms comprised of architects, engineers and other design professionals would generally market one integrated service to project owners. Yet, this line between an integrated service comprised of complementary functions, and separate complementary services is often difficult to draw. Is landscape architecture part of a design-build package or is it a separate complement?

The pervasiveness of these definitional problems militates against a fact-specific regulatory approach. Moreover, the risks to consumers of multi-disciplinary services are mitigated by the presence of stable competitive markets in which complements can be purchased separately. For example, life insurance and unlicensed accounting services are sold separately; the average client would have a reliable basis for comparing the price and quality characteristics of the complementary service offered by the multi-disciplinary firm with the same services being provided separately by competitors.

There are no really satisfactory regulatory solutions to the "feeding" problem. It is virtually impossible to distinguish systematically those types of multi-disciplinary firms which would sell integrated services from those which offer separate complementary services. Moreover, it is rather optimistic to suggest that the average client will possess sufficient sophistication to pursue a careful comparison between the characteristics of complementary services and those offered separately by competitors. It should be noted that the logic of prohibiting multi-disciplinary practice because of the "feeding problem" would also require the separation of the agency and service functions in all markets for professional services. There is no obvious reason why the balance between efficiency and consumer protection should compel a prohibitory response to the "feeding" problem inherent in multi-disciplinary practice.

One affirmative regulatory response to the "feeding" problem would be to restrict access to multi-disciplinary practice to those professionals who could demonstrate adherence to altruistic norms which would assist them

in resolving ethical conflicts in the best interests of their clients.

(2) Conflicts of Interest and Incompatible Services and Functions

The joint provision of certain types of professional and non-professional services may create conflict of interest situations; these conflicts arise from the combination of incompatible roles or functions. These fact-specific conflict situations vary widely in both degree of severity and probability of occurrence. Each may require a specially tailored regulatory response. I shall attempt to identify those types of multi-disciplinary practice which involve the performance of incompatible functions, and suggest possible regulatory approaches.

Conflicts of interest may arise from multi-disciplinary practice involving lawyers and real estate agents. The law of agency regards the realtor as the agent of the vendor in a real estate transaction, since it is the vendor who pays his commission for obtaining a purchaser.[116] If a lawyer, associated in practice with a realtor, agreed to represent the vendor in the transaction, there would be no risk of conflicting loyalties since both members of the firm act for the same client. If, however, the lawyer agreed to act for the purchaser, the lawyer has a substantial conflict of interest with the purchaser-client. The lawyer has a pecuniary interest in the successful completion of the transaction because he, as a partner of the realtor, will share in the commission paid by the vendor. On the other hand, the lawyer has an obligation to protect the interests of his purchaser-client, which may include advising him to exercise the legal rights he may possess to refuse to perform the contract of sale. It should be noted that

in most transactions no actual conflict of loyalty would arise; real estate transactions will rarely generate substantial disputes. In fact, the Law Society's Professional Conduct Handbook permits a lawyer to represent both vendor and purchaser, if both parties consent to the arrangement with adequate knowledge of the potential conflict.[117] The lawyer who undertakes dual representation must, however, decline to continue as counsel for either party if a conflict arises between them. The position of the lawyer associated with a realtor is somewhat different from that of a lawyer who agrees to act for both vendor and purchaser. The lawyer who undertakes dual representation has no pecuniary interest in the completion or non-completion of the transaction while the lawyer in the multi-disciplinary firm stands to gain if the deal is completed.

Public accountancy firms market a variety of general accounting and management advisory services in addition to audit services. Most of these complementary services are perfectly compatible with the attest functions. Yet certain of the non-accounting management services such as executive recruitment and marketing analysis give rise to interests which may conflict with the independent auditor's responsibility to the consumers of signed financial statements. Thus, if an accounting firm's management advisory division or affiliate has been responsible for recruiting the key executives of an audit client,

it may be willing to accede to public reporting methods designed to mask evidence of poor management performance. The same type of subtle conflict may arise from the provision of product or marketing analysis services to audit clients. There is substantial disagreement concerning the severity of these conflicts and their potential impact on the performance of attest functions. The Cohen Commission on Auditor's Responsibilities concluded that there is no evidence that the provision of complementary services has actually impaired performance of the audit function.[118] Another recent study, the "Metcalf Report", concluded, without citing any actual evidence of poor performance, that the "[n] on-accounting management services . . . are incompatible with the public responsibility of independent auditors, and should be discontinued."[119] Canadian accountants interviewed by the author felt that any conflicts that might arise from the concurrent provision of management consulting services were simply too insignificant to counterbalance the legal and institutional factors designed to safeguard auditor independence.[120]

Similiar role conflicts may arise in a multi-disciplinary firm comprised of lawyers and public accountants providing general legal services and audit services to corporate clients. There is a fundamental conflict between the lawyer's role as partisan advocate and the auditor's role as an impartial evaluator of financial information.

This potential role conflict may surface when, for example, the auditor-partner seeks information concerning contingent claims against the corporate client from his lawyer-partner. The reporting of potential "unasserted claims" is an important part of the auditor's function, yet his lawyer-partner may be understandably reluctant to disclose the existence of potential damage claims to potential plaintiffs. This may be regarded as a breach of the lawyer's duty of loyalty to the firm's client. On the other hand, it may be argued that since the management of the corporate client has an obligation to disclose this sort of material information to the auditor, the client has no grounds for objection if the disclosure comes from the auditor's lawyer-partner.

There is an additional conflict which may arise from the extension of the attorney-client privilege to the public accountant partners of a lawyer engaged in multi-disciplinary practice. The traditional rule is that confidential communications made by a client to a lawyer for the purpose of obtaining legal advice are immune from disclosure. While there are many exceptions, the privilege is generally held to apply to associates or assistants of the lawyer.[121] Thus, the auditor-partner may be privy to communications from a corporate client which are protected from disclosure by the attorney-client privilege. If this privileged information was in some way

material to the client's financial position so that public disclosure was required under established audit standards, the auditor-partner would be faced with an acute role conflict. It could be argued that the client would have an obligation to disclose such information to the auditor (in his capacity as auditor) in spite of the privilege. However, in many cases the materiality of such information may be in doubt; the existence of the privilege in such doubtful cases may adversely affect the auditor's impartiality.

Multi-disciplinary firms of architects and engineers may wish to offer integrated design and construction services directly to project owners. Conflicts of interest are likely to arise when such a firm acts as prime consultant for a building project on which it has also undertaken to perform construction services. Since the prime consultancy function usually entails responsibility for monitoring contractor performance, the firm's dual roles are fundamentally incompatible. The risks of injury to the project owner are fairly substantial in this situation because disputes about the adequacy of contractor performance arise frequently on large and complex projects.

The formulation of an appropriate regulatory response necessitates an explicit analysis of the costs and benefits of specific types of multi-disciplinary practice involving incompatable roles or functions. This would essentially involve weighing the efficiency gains which might be generated by a particular type of multi-

disciplinary service against such factors as the severity of potential client harm, and its probability of occurrence. In some cases there may be protective measures (e.g. disclosure and consent requirements) which would reduce the likelihood of client injury to acceptable levels. In other cases, the probability of harm from conflicting interests may be low because of the nature of the services, or the degree of sophistication possessed by the firm's clientele. Moreover, it might be desirable in some cases to distinguish between mixed firms composed of licensed professionals and those in which both professionals and non-professionals collaborate. Licensed professionals may often be more adept at managing conflicts of interest because of their participation in an occupational culture which emphasizes the promotion of client welfare. It is very difficult to ascertain the importance of this "cultural" factor; in cases in which the costs and benefits are evenly balanced, it may militate in favor of restricting access to a particular type of multi-disciplinary practice to combinations of licensed professionals. The application of these decisional factors to specific types of conflicts arising from multi-disciplinary practice will require a great deal of detailed information. Moreover, even if the Committee possessed the information and expertise required, I doubt whether it is the appropriate institution to resolve these types of regulatory issues. The formulation of regulatory measures appropriate for particular forms of multi-disciplinary organization should be left to specialized institutions which adequately represent all affected interests and possess the required knowledge and expertise. It would, however, be desirable for the Committee to suggest guidelines and decisional criteria to aid the appropriate regulatory bodies in making these determinations. A few examples of how these suggested

criteria could apply in specific conflict situations might also be helpful.

It may be desirable to adopt a rule prohibiting a lawyer from representing the purchaser in a real estate transaction in which the lawyer or his realtor-partner acts as commission agent for the vendor. While the probability of an actual conflict arising may be fairly small, the potential for harm to the purchaser-client is substantial. Moreover, the traditional protective mechanism of requiring disclosure of the possible conflict to the client would not significantly reduce the risk of harm. Most purchasers would not possess the technical knowledge to assess the probability of conflict, or identify specific conflict situations when they arose. If these factual assumptions were found to be reasonably accurate, an informed decision-maker would be justified in prohibiting this specific practice.

Another example concerns the appropriate regulatory treatment of the marketing of management consulting services by firms engaged in the concurrent practice of public accountancy. While the probability of an actual conflict is likely to be very low, the potential harm to third party users of financial statements may be great. However, other countervailing factors, such as the risk of tort liability or potential loss to the firm's reputation, may adequately

safeguard the consumers of financial statements. If these observations prove to be accurate, a regulatory body might conclude that the risks to auditor independence are too small to justify preventive measures.

(3) Advertising

The Law Society of Upper Canada and the Public Accountancy Council have adopted ethical rules which specifically forbid advertising the availability of multi-disciplinary services.[122] These prohibitions create obvious barriers to multi-disciplinary innovation. The merits of the debate over the advertising of professional services are beyond the scope of this paper. Yet a few specific aspects of the rules forbidding the advertising of multi-disciplinary services are somewhat unique. First, the only plausible consumer protection rationale for these specific restrictions is the existing ban on the advertising of a specialty. Some methods of publicizing the availability of multi-discplinary services may be tantamount to holding out as specialists, but other methods would not involve specialty advertising. Thus, an office sign which merely identified the members of the firm as lawyers and accountants would not create the impression of any special expertise. There is simply no justification for prohibiting a multi-disciplinary firm from identifying the professional and occupational

status of its members. Second, the ability to advertise the existence of specialized services may be a crucial factor in the marketing of many types of multi-disciplinary services. The prospects for successful multi-disciplinary innovation may be substantially dependent on adequate opportunities for publicizing the availability of new forms of service. Multi-disciplinary practice should not create any unusual problem for the implementation of a specialty licensure system. For example, lawyers who wished to form a partnership with accountants for the purpose of marketing tax services would be required to obtain an appropriate specialty certification.

(4) Compliance With Professional Conduct Rules

The self-regulating professional bodies have a legitimate interest in controlling the conduct of lay partners and employees associated with their members in multi-disciplinary practice. If, for example, a multi-disciplinary firm provides legal services, it is appropriate that all members and employees comply with the Law Society's rules of professional conduct. The extension of professional conduct norms to lay members should not create any substantial impediment to multi-disciplinary practice, with one important exception. While the ethical codes of the four professions are

quite similar in most respects, they diverge substantially in regard to advertising and promotional activities. However, in most cases these differences should not impede the most likely forms of multi-disciplinary practice among professionals. Thus, neither architects nor engineers are subject to any significant restraints on promotional activity. Similarly, both lawyers and public accountants must comply with much more stringent contraints on advertising and solicitation. The forms of multi-disciplinary practice most likely to be impeded are those involving the performance of non-professional services in conjunction with law and public accountancy. Realtors, life insurance agents and tax accountants may be reluctant to submit to the Law Society's or P.A.C.'s rules governing advertising and solicitation. To the extent that these ethical rules have a legitimate independent justification, it is difficult to argue that the lay associates of lawyers or public accountants should not be compelled to comply with them. In any event, it should be emphasized that the problem of policing non-professional conduct in multi-disciplinary practice is primarily related to promotional activity. Thus, if restrictions on advertising are relaxed for all the professions, this disincentive to multi-disciplinary practice will be eliminated.

While the violation of ethical rules by non-professionals is unlikely

to create any substantial regulatory problems, it may be desirable to provide regulatory bodies with some mechanism for policing the conduct of multi-disciplinary practice. If, for example, the existing prohibitions on solicitation of professional business are retained, there is the risk that a professional might attempt to circumvent these restrictions by encouraging his lay partner or associate to solicit prospective clients. One approach to ensuring lay compliance would be to adopt a rule, similar to the I.C.A.O.'s Rule 402.2, making the professional personally responsible to his licensing body for the conduct of his lay associates.[123] Another alternative would be a licensing scheme similar to the "certificate of authorization" system administered by the A.P.E.O.[124] For example, every multi-disciplinary firm offering legal services to the public would be required to obtain a license from the Law Society; a licensed lawyer, either a shareholder or partner, would be designated as the person responsible for ensuring compliance by all members and employees with the Law Society Act and code of ethics. The firm licensure approach should provide the professional bodies with effective regulatory control; the threat of license revocation would be a strong deterrent to misconduct by non-professionals.

Conclusions and Recommendations:

1. Multi-disciplinary innovation should be viewed as an organizational response to increasing task specialization. The multi-disciplinary organization of professional and non-professional work may generate substantial benefits to consumers by reducing the costs of existing services, and by the introduction of new forms of service. Cost-reducing innovations are most likely to benefit those consumers whose service needs have not been satisfied in existing markets. Quality innovations, which include the creation of new forms of services, are most likely to benefit large corporate and institutional clients who possess established relationships with service providers.

2. Multi-disciplinary practice would permit the reduction of artificial constraints on the efficient allocation of functions and specific tasks in the provision of services. Task responsibilities could be reallocated within the inter-disciplinary work group on the basis of comparative advantages in aptitude or experience which are not reflected in existing statutory definitions of the professional groups' licensed functions. The achievement of substitution efficiencies will involve exploiting opportunities for greater specialization of effort within the multi-disciplinary firm.

3. Substantial efficiences may be realized through the joint provision of services involving complementarities in the acquisition and use of information. There may also be significant payoffs from multi-disciplinary practice when complex interrelationships between services necessitate close coordination of service providers. Multi-disciplinary practice may also reduce the market transaction costs of service consumers.

4. Multi-disciplinary collaboration may generate synergestic gains in the performance of the agency function. Complementarities in the problem-solving skills of related disciplines may lead to new perceptions concerning client needs, and may promote the formulation of more appropriate solutions to client problems.

5. The regulatory schemes of the four professions differ markedly in their treatment of multi-disciplinary methods for organizing their members' work. The basic conditions which shape professional and client conduct in each of the four markets have caused sharp differences in the scope and content of the regulatory schemes. These differences are cast in sharp relief by an analytic framework which focuses on the goals of the four systems. The licensure standards and ethical codes of each of the four professions have been shaped by three general objectives - to police professional

competence, independence and integrity. However, it should be emphasized that the four schemes differ markedly from one another in their relative weighting of regulatory goals, and in their choice of implementation strategies. This diversity precludes any "omnibus" policy response; appropriate regulatory policies must proceed from a fact-sensitive approach.

6. The primary issue of institutional design is the appropriateness of a preventive or prophylactic approach to the control of professional conduct. The ethical codes and regulations of the four professions emphasize the importance of foreclosing opportunities for dishonesty and incompetent practice. This rigorous preventive approach imposes substantial costs on consumers and professionals because it also forecloses opportunities for innovative behaviour. When the choice of preventive strategies entails some substantial sacrifice of efficiencies, a more refined approach to the welfare tradeoffs implicit in the design of regulatory mechanisms should be adopted. In some situations, the preventive approach may produce costs far in excess of the consumer protection benefits it generates.

7. The self-regulating bodies have adopted rules prohibiting partnerships with non-professionals in order to safeguard consumers against

practice by incompetent persons. These preventive rules, designed to foreclose opportunities for unauthorized practice, impede the organization of multi-disciplinary practice. The costs to consumers from these restrictions on multi-disciplinary innovation far outweigh the consumer protection benefits provided by the existing prohibitions on professional association with non-professionals. Even if these prohibitions were repealed, non-licensees in multi-disciplinary firms would still be subjected to the risk of prosecution for unauthorized practice. The preferred solution is to provide members of multi-disciplinary firms with a statutory defense to an action for unauthorized practice. If the unlicensed partner can prove that he performed the licensed functions in collaboration with a licensed professional, he should have a complete defense.

8. While the enterprise liability rule may dampen incentives for multi-disciplinary practice, its adverse impact can be neutralized through professional liability insurance and indemnification agreements. Moreover, the enterprise liability rule creates strong incentives for licensed partners or shareholders to properly monitor the performance of their unlicensed colleagues. This monitoring function is an important safeguard to the consumers of multi-disciplinary service.

10. Differential access to the incorporation privilege among the four professions has the indirect effect of impeding multi-disciplinary practice. This problem can be solved by equal treatment, either through universal extension or withdrawal of the privilege.

11. The self-regulating bodies have adopted a rigorous preventive approach to the policing of professional independence. Existing rules designed to insulate professional-client relations from non-professional party control include: (1) prohibitions on corporate practice; and (2) prohibitions on engaging in public practice as an employee of any firm owned by non-licensees. These rules severely restrict the opportunities for multi-disciplinary practice. The fact that multi-disciplinary practice might result in the dilution of professional independence is not a sufficient justification for prohibitions on non-professional ownership. The traditional argument against non-professional owernship proceeds from the assumption that lay entreprenuers are more likely to exploit poorly informed consumers than are professional owner-managers. While the profit maximization hypothesis casts substantial doubt on this assumption, we lack any reliable knowledge concerning the effect of professional culture on entrepreneurial behavior. Therefore, the removal of existing restrictions on non-professional ownership should be accompanied by the imposition of minimum beneficial ownership requirements for

both corporations and partnerships. At least ten percent of the shares of any multi-disciplinary firm should be held by a person (or persons) who is licensed to provide the professional services offered by the firm; similarly, at least one partner of any multi-disciplinary firm should be a person who is licensed to provide the professional services offered by the firm.

12. Multi-disciplinary practice may give rise to two general types of conflict of interest situations. The first type of conflict arises from the professional's ability to influence client demand for a complementary service. The risk of dishonest conduct arising from this type of conflict is not substantial enough to warrant prohibition of multi-disciplinary practice. These conflicts will not arise when complementary services are supplied as an integrated or single service; moreover, consumers can safeguard their interests by ascertaining the price and quality characteristics of the same services when sold separately by competitors. The second type of conflict arises from the potentially incompatible nature of particular services which may be jointly provided by multi-disciplinary firms. These conflicts are particularized and limited to special fact situations. Appropriate regulatory responses to these conflict problems require an explicit weighing, in each specific case, of the anticipated efficiency gains against such factors as the severity of

potential client harm, its probability of occurrence, and the availability of supplementary protective mechanisms (e.g. disclosure and consent requirements). These complex balancing decisions should be left to specialized institutions which adequately represent all affected interests and possess the required information and expertise.

13. Multi-disciplinary innovation is substantially impeded by existing restraints on advertising. Ethical rules which forbid multi-disciplinary firms from identifying the professional and occupational status of their members should be abrogated.

14. While the violation of professional norms by non-professionals is unlikely to create any substantial regulatory problem, it is desirable to provide the regulatory bodies with some mechanism for policing the conduct of multi-disciplinary practice. A system for licensing multi-disciplinary firms should provide the professional groups with effective control over lay conduct.

FOOTNOTES

1. There is no statutory definition of the practice of law. Section 50 of The Law Society Act, R.S.O. 1970, c. 238 proscribes a non-member from acting "as a barrister or solicitor . . . ."

2. The Public Accountancy Act, R.S.O. 1970, c. 373, s 1 (c); see also, Institute of Chartered Accountants of Ontario, Member's Handbook (1975), By-law 2 (1) (p), at 2-04.

3. The Professional Engineers Act, R.S.O., 1970, c. 366, s 1(i).

4. The terms "professional" and "non-professional" are employed in their purely legal and formal sense - a peculiar status conferred on an occupational group by the delegation of regulatory powers from the state. While these self-regulatory powers may differ in scope and content, they would, at a minimum, include the power to control entry into the occupation, and police the conduct of its members. Specialists in the sociology of work have formulated many definitions or characterizations of the professions or professionalism. See, e.g. W.E. Moore, The Professions: Roles and Rules (1970), at 6-22; E.C. Hughes, "Professions," in K.S. Lynn (ed.), The Professions in America (1965), at 1-14.

5. J.K. Galbraith, The New Industrial State (1967) at 60-72 & 86-89; J.K. Galbraith, The Age of Uncertainty (1977) at 268-73.

6. See, e.g., D. Melville, Men Who Manage (1959); B.C. Glaser, Organizational Scientists: Their Professional Career (1964). For a less scholarly and more technocratic approach, see, e.g., American Management Association, Optimum Use of Engineering Talent (1961).

7. C.J. Tuohy and A.D. Wolfson, "The Political Economy of Professionalism: A Perspective", in Consumer Research Council, Four Aspects of Professionalism (1976), 41, at 47-49.

8. Id. at 49-52.

9. Since most professions encounter great difficulty in formulating specific functional definitions of the work they are peculiarly competent to perform, some have begun to focus on an "agency function" as the distinguishing characteristic of their services. The American Bar Association's Code of Professional Responsibility (1971) declares that definition of the "practice of law" is simply impossible, and falls back on a rather hazy notion of professional "judgement". Ethical Consideration 3-5 states, in part:

> "Functionally, the practice of law relates to the rendition of services for others which call for the professional judgment of a lawyer. The essence of the professional judgment of the lawyer is his educated ability to relate the general body and philosophy of law to a specific legal problem of a client; . . . ." Id. at 15.

10. C.J. Tuohy & A.D. Wolfson, note 6, supra, at 49-52.

11. See, e.g., Institute of Management Consultants, The Profession of Management Consulting (informational brochure). Woods, Gordon & Co., Management Consultants (promotional brochure).

12. See, e.g. W.W. Cawdill, Architecture By Team (1971), at 69-75; Conversation with Mr. Andrew Mathers, Mathers and Halenby, Toronto, Ontario, on Nov. 30th, 1976.

13. Education is a crucial factor. See, E.H. Schien and D.W. Kommers, Professional Education (1972); W.J. McGlothlin, The Professional Schools (1964), at 68-130.

14. See E. Mansfield, The Economics of Technological Change (1968), at 6-9.

15. See text & notes infra pp. 48-56.

16. E.g., repeat corporate or institutional consumers of architectural or engineering services.

17. B.A. Curran & F.O. Spalding, The Legal Needs of the Public (Preliminary Report of a National Survey sponsored by the American Bar Foundation, 1974), at 59-93.

18. "Editorial", The Accountant, Jan. 6, 1977, at 11; Conversation with Messrs. Irving Rosen, Don Scott and William Broadhurst, Institute of Chartered Accountants of Ontario, Toronto, Ontario, on Dec. 2, 1977. There seemed to be a general consensus that a substantial untapped market for general accounting services exists among small businesses.

19. D. Dewees, S. Makuch and A. Waterhouse, An Analysis of the Practice of Architecture and Engineering in Ontario (mimeo, 1977), (first draft), at 205-221 and 247-260. This analysis suggests some potential demand for architectural services by individuals - single family residence design.

20. See, e.g., B. Christensen, Bringing Lawyers and Clients Together (1969) at 2-11.

21. See generally, J.D. Thompson & W.J. McEwen, Organizational Goals and Environment: Goal - Setting as an Interaction Process (1958) 23 Amer. Socio. Rev. 23.

22. See, J. Auerbach, Unequal Justice: Lawyers and Social Change in Modern America (1976) at 22-24.

23. Conversation with Mr. Stewart Nyman, President, Institute of Management Consultants, Toronto, Ontario, on Dec. 2, 1977.

24. See, e.g. J. Marschak, Economics of Inquiring, Communicating and Deciding (1968) 58 Amer. Econ. Rev. 1.

25. E.g. Law Society of Upper Canada, Professional Conduct Handbook (1974), Ruling 34, at 75.

26. Id.; Institute of Chartered Accountants of Ontario, Rules of Professional Conduct, Rule 406 (5), at 44.

27. See, Law Society of Upper Canada, note 23, supra.

28. See, C.J. Tuohy and A.D. Wolfson, note 6, supra, at 56.

29. See, The Law Society Act, R.S.O., 1970, c. 237, s. 50 (restricting practice to "members") & s. 28 (restricting "members" to natural persons).

30. See, e.g., Draft Architects Act (1975) s. 15 (2) (c).

31. See, e.g., Canadian Bar Association, Code of Professional Conduct (1975) chap. VI, at 22-23.

32. See, F.R. Marks & D. Cathcart, Discipline Within the Legal Profession: Is It Self-Regulation? [1974] III. L.F. 193, at 200-19 (good discussion of monitoring problems created by lack of performance standards).

33. See M. Spence, Entry, Conduct and Regulation in Professional Markets, Working Paper #2 prepared for the Professional Organizations Committee, 1976.

34. See, P. Pashigian, The Market for Lawyers: The Determinants of of the Demand for and Supply of Lawyers, 20 J. of Law & Econ. 53 (1977).

35. But see, M. Spence, note 33, supra, at 9. The "escape valve" argument seems unconvincing. The generalist professions and occupations into which unemployed lawyers formerly migrated are becoming more technocratic and professionalized.

36. See, e.g., Law Society of Upper Canada, Professional Conduct Handbook (1974), Ruling 10, at 27 and Ruling 16, at 39.

37. For a good professional market study, see L. Benham & A. Benham, Regulating Through The Professions: A Perspective on Information Control (1975), 18 J. of Law & Econ. 421, at 422-23.

38. See, e.g., Public Accountants Council, Regulations and Rules of Professional Conduct for Public Accountants in Ontario (1975, mimeo) at 5-6.

39. See, American Bar Association, Committee on Professional Relations, Proposed Code of Conduct for Lawyers and Certified Public Accountants Who Practice In Association and for Individuals Possessing Dual Qualifications (1958), 9 J. of Taxation 198, at 200.

40. See, e.g., A. Levy & W. Sprague, Accounting and Law: Is Dual Practice In the Public Interest (1966) 52 A.B.A. J. 1100, at 1113.

41. See, American Bar Association, Committee on Professional Ethics and Grievances, Opinion 297: Lawyer-Accountant Relationship (1961, Supp.).

42. D.S. Lees, Economic Consequences of the Professions (1966, Institute of Economic Affairs) at 27-31; J. Michaud, Licensure and Its Effects: An Economic Approach (1973, mimeo) at 20-22.

43. The Law Society Act, R.S.O. 1970, c. 237, s. 50.

44. Canadian Bar Association, Code of Professional Conduct (1975), Chap. XV, at 58-59; Law Society of Upper Canada, Professional Conduct Handbook (1974) Ruling 34, at 75.

45. The Law Society, The Professional Conduct of Solicitors (1974), Chap. 7 (111) Rule 3, at 109.

46. American Bar Association, Code of Professional Responsibility (1971), D.R. 3-103 (A), at 15.

47. Conversation with Mr. W.L. Hayhurst, Ridout and Maybee, Toronto, Ontario, on Nov. 30th, 1976.

48. The Law Society Act, R.S.O., 1970, c. 238, s. 50 (restricts practice to "members") & s. 28 (restricts membership in the Law Society to natural persons).

49. American Bar Association, Code of Professional Responsibility (1971) D.R. 5-107 (c), at 21.

50. Law Society of Upper Canada, Professional Conduct Handbook (1974), Ruling 34, at 75.

51. Canadian Bar Association, Code of Professional Conduct (1975) Chap. VI, at 22.

52. Vol. 9, Quebec Stat. Regs., (Jan. 1973) s. 26, at 9-015.

53. Law Society of Upper Canada, Professional Conduct Handbook (1974), Ruling 15, at 37.

54. Canadian Bar Association, Code of Professional Conduct (1975), Chap. V, para. 8, at 18.

55. See, Law Society of Upper Canada, note 53, supra, Ruling 31, at 69; Ruling 3 (2) (a), at 13.

56. Id. at 27 & 39.

57. Id., Ruling 3(d) et. seq., at 13-14, and Ruling 28, at 63.

58. See, American Bar Association, note 49, supra, at 8.

59. See, Law Society of Upper Canada, note 55, supra.

60. See, J.R. Wilson, The Attorney - C.P.A. and the Dual Practice Problem (1959) 36 U. of Detroit L.J. 457, at 458.

61. See authorities cited, note 38, supra.

62. See text and notes, p. 20 supra.

63. The Public Accountancy Act, R.S.O., 1970, c. 373, s. 24(1).

64. Institute of Chartered Accountants of Ontario, Member's Handbook, Rules of Professional Conduct (1974), Rule 406(5), at 6-35.

65. Interview with Messers. Irving Rosen, Donald Scott and William Bradhurst, F.C.A.'s, I.C.A.O., Toronto, Ontario on Friday, December 2, 1977.

66. I.C.A.O., Member's Handbook, Rules of Professional Conduct (1974) Rule 402.2, at 6-34.

67. American Institute of Certified Public Accountants, Member's Handbook, Rules of Professional Conduct, Rule 3, at 9. See also, J.L. Carey, Professional Ethics of Certified Public Accountants (1956), at 83.

68. The Public Accountancy Act, R.S.O. 1970, c. 373, s. 25.

69. I.C.A.O., Member's Handbook, supra. note 66, at 6-36.

70. I.C.A.O., Report of the Special Committee on Professional Incorporation and Professional Liability (1970), p. ii.

71. Public Accountants Council, Regulations & Rules of Professional Conduct (1978) s. (h), at 4; I.C.A.O., Member's Handbook, Rules of Professional Conduct, Rule 204, at 6-30.

72. I.C.A.O., Member's Handbook, supra. note 66, at 6-37.

73. Id. at 6-38.

74. Institute of Chartered Accountants in England and Wales, Member's Handbook, Ethical Guide, Statement 11, at 13.

75. U.S. Senate, Senate Sub-Committee on Reports, Accounting and Management, The Accounting Establishment Staff Study ("Metcalf Report") (1977), at 9-10.

76. P.A.C., Regulations, supra. note 71, at 5.

77. I.C.A.O., Member's Handbook, supra. note 66, at 6-37.

78. P.A.C., Regulations, supra. note 71, at 6; I.C.A.O., Member's Handbook, supra note 66, at 6-35.

79. I.C.A.O., Member's Handbook, supra. note 66, at 6-38.

80. The Architects Act, R.S.O., 1970, c. 27, s. 16(1)(a).

81. Ontario Association of Architects, Regulations, Professional Conduct, (1976) Reg. 35, at 7.

82. Id. at 5.

83. Draft of Revised Architects Act.

84. O.A.A., Regulations, Reg. 36(b), at 7.

85. Id. at 7-8.

86. Id., Reg. 37(b), at 8.

87. Id., Reg. 57, at 9.

88. Id., Reg. 51, at 8.

89. The Professional Engineers Act R.S.O., 1970, c. 237, s. 33.

90. Brochure of Marshall, Machlin and Monaghan, Don Mills, Ontario.

91. The Professional Engineers Act, R.S.O., 1970, c. 237, s. 20.

92. Id. at s. 20(2) and (6).

93. Association of Professional Engineers of Ontario, Code of Ethics.

94. Id.

95. Id.

96. See text supra, pp. 6-11

97. The Architect's Act, R.S.O., 1970, c. 27, s. 16.

98. Id. , at s. 16 (4)(b); The Professional Engineers Act, R.S.O. 1970, c. 366, s. 1(1).

99. See, e.g., P.A. Samuelson & A. Scott, Economics (1975, 4th Can. Ed.), at 400.

100. C.J. Tuohy & A.D. Wolfson, "The Political Economy of Professionalism", in Consumer Research Council Canada, Four Aspects of Professionalism (1977), at 55.

101. W.W. Caudill, Architecture By Team (1971) at 69.

102. See Havinghurst Health Maintenance Organizations and the Market for Medical Services (1970), 35 Law & Contemp. Prob., 716.

103. See D. Wittman, Prior Regulation Versus Post Liability: The Choice Between Input and Output Monitoring, (1977), 6 J. Legal Studies 146; see generally, H. G. Grabowski, Drug Regulation and Innovation (1976), American Enterprise Institute Monograph).

104. See e.g., Canadian Bar Association, Code of Professional Responsibility (1974), Chap. 15, at 58-59.

105. The Professional Engineers Act, R.S.O., 1970, c. 366, s. 1 (1).

106. O.A.A., Regulations, Reg. 33(b), at 6.

107. Interview with Professor Keith McNair, F.C.A., Faculty of Law, University of Western Ontario, London, Ontario on January 31, 1978. For example, while there is no legal impediment to a tax accountant's representation of client interests before the Tax Review Board, lawyers are invariably retained to handle matters involving the Board.

108. See Levy & Sprague, Accounting and Law: Is Dual Practice in the Public Interest (1966), 52 A.B.A.J. 1110, at 1112.

109. See, e.g., Law Society of Upper Canada, Professional Conduct Handbook (1974), Ruling 1, para. 3(1), at 6.

110. J.R.S. Prichard, Incorporation by Professionals, Working Paper #5 prepared for the Professional Organizations Committee, 1978.

111. See, e.g., W.E. Moore, The Profession: Roles and Rules (1970), at 205; H.L. Wilensky, The Professionalization of Everyone? (1964) 137 Am. J. of Soc. 150-156.

112. See, C.E. Bidwell & R.S. Vreeland Authority and Control in Client-Serving Organizations (1963) 4 Soc. Qt'ly. 23; R.L. Blankenship, Toward a Theory of Collegial Power and Control in R. Blankenship, Colleagues in Organization (1977) at 394.

113. See, K.J. Arrow, The Limits of Organization (1974) at 36. Professor Arrow discusses information inequalities in the context of other types of market failure:

" Another illustration of the inequality of information among economic agents is in the relation between patient and physician. It is of the essence of this or other relations between principal and agent that they differ in their information about the world. But this means that there can really be no contract which insures against the agent's failure to do his business properly. I have argued in a study of medical economics that one might regard professional ethics as an example of an institution which fills in some measure the gap created by the corresponding failure of the price system." Id. at 36-37.

114. See text supra p. 20 and notes 39 & 40.

115. C.J. Tuohy & A.D. Wolfson, "The Political Economy of Professionalism", supra note 101, at 56.

116. See, e.g., D'Atri v. Chiliott (1975), 7 O.R. (2d) 249 (H.C.); Wyne v. Martin (1968), 62 W.W.R. 735 (B.C.S.C.).

117. Law Society of Upper Canada, Professional Conduct Handbook, (1974) Ruling 2, at 11.

118. Commission on Auditor's Responsibilities, Report of Tentative Conclusions (1977) at 91-94.

119. U.S. Senate, Senate Sub-Committee on Reports, Accounting and Management, The Accounting Establishment, A Staff Study ("Metcalf Report") (1977), at 9-10.

120. Interview with Messrs. Irving Rosen, Donald Scott and William Broadhurst, F.C.A.'s, on Dec. 2, 1977.

121. See, e.g., authorities cited in J. Sopinka & S.N. Lederman, The Law of Evidence In Civil Cases, (1974), at 166-67.

122. Law Society of Upper Canada, Professional Conduct Handbook, (1974) Rulings 10 & 16, at 27 & 39; Public Accountancy Council, Regulations and Rules of Professional Conduct (1975), s. (s), at 5.

123. I.C.A.O., Member's Handbook, supra note 66, at 6-28.

124. The Professional Engineers Act, R.S.O., 1970, c. 366, s. 20.

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